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Director's Decisions for California

Small Tract

1955-1959

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In reply refer to:

1/ Los Angeles 0134373
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OCT 25 1955
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 11, 1955

Registered Mail
Return Receipt Requested

DECISION

1/ Charles Hover Stevens et al : Small Tract Applications

Decision of Manager Affirmed

Charles Hover Stevens and 31 other appellants, through William C. Helvey, purporting to act as their agent and attorney in fact, have filed identical appeals from the decision of the Manager of the Land Office at Los Angeles, California, dated August 1, and 5, 1955, holding their respective Small Tract Applications for lands in the SW¼ sec. 12, T. 5 N., R. 3 W., S.B.M., California, for rejection.

The reason for the rejection as stated by the Manager is:

> "The records of this office show that Public Land Order #125 withdrew all of Section 12 from all forms of appropriation under public land laws, including mining and mineral leasing for use of War Department as bombing target site, Dept'l Order dated May 20, 1943, 'R' 6-3-43.
>
> "Public Land Order #807, effective February 27, 1952, revoked previous Order #125, but land not subject to initiation of any rights or disposition under public land laws until so provided in order of classification."

The appellants allege in substance that under 43 CFR 257.5 they were eligible to make their respective filings and await the classification of the land to which they then would have a preference right.

The records show all of sec. 12, T. 5 N., R. 3 W., S.B.M., together with other lands were withdrawn by the Secretary on May 20, 1943, under Public Land Order 125, from all forms of appropriation

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1/ See Schedule "A" for list of 31 other appellants.

and reserved for the use of the War Department as a bombing range, pursuant to Executive Order 9337 of April 24, 1943.

On February 27, 1952, by Public Land Order 807 the Secretary by virtue of authority delegated to him revoked Public Land Order 125, as to certain lands, including the NW¼NE¼, and SW¼ sec. 12, T. 5 N., R. 3 W., S.B.M. In this order of revocation it is provided the lands in Sec. 12 indicated shall not become subject to the initiation of any rights or to any disposition under the public land laws, until it is so provided by an Order of Classification, opening the lands to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended, with a 90-day preference right period for filing applications by veterans of World War II and other qualified persons entitled to preference under the Act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279-284), as amended. The Secretary's authority to dispose of land under the Small Tract Act does not extend to land withdrawn by the President under orders other than Executive Orders 6910 of November 26, 1934, and 6964 of February 5, 1935, or to land withdrawn by the Secretary of the Interior pursuant to authority delegated to him by the President. See Ernest E. Wissman, A-25750 (January 20, 1950).

The withdrawal on May 20, 1943, of the land under consideration here was a withdrawal made by the Secretary pursuant to authority delegated to him by the President. Consequently the land so withdrawn was not within the categories of withdrawn land subject to disposition under the Small Tract Act.

Furthermore, when restorations are made of lands withdrawn by the President or under his delegated authority and the land is restored to entry under the Small Tract Act, it is subject to the veterans' 90-day preference right. (43 U.S.C., 1952 ed., sec. 282; 43 CFR 181.44 and 181.45).

It was for the foregoing reasons that Public Land Order 807 provided for a 90-day preference right to veterans when the land under consideration is classified for small tracts. Since the lands restored have not been classified as subject to the Small Tract Act, nor veterans given the benefits of the 90-day preference right transferred upon them by the restoration order, the Manager's action in rejecting the applications was therefore proper.

Accordingly, the decision of the Manager is affirmed. Each applicant has the right of appeal to the Secretary of the Interior for a period of 30 days. If an appeal is filed, it must conform to the provisions of 43 CFR secs. 221.75 and 221.76. See attached Circular 1818.

In each of the cases identified herein, a Power of Attorney by the small tract applicant was executed purporting to authorize William C. Helvey of Apple Valley, California, a realtor, as Agent and Attorney in Fact to represent such small tract applicant in all matters pertaining to the case before the Bureau of Land Management.

With reference to authority to practice before this Department, 43 CFR 1.3 provides in pertinent part as follows:

> "(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1954, shall be permitted to practice before the Department.
>
> "(2) Attorneys at law who are admitted to practice before the courts of any State, Territory, or the District of Columbia will be permitted to practice without filing an application for such privilege.
>
> "(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; * * * "

It does not appear from the respective case files nor from the records of this Department that William C. Helvey is qualified under any of the foregoing provisions and therefore he apparently was without authority to represent the respective small tract applicants in the pending appeals. The appeals could have been dismissed for this reason alone.

For the Director:
A. H. Kerr

Attachment

Copy to: Each AO
Each SO
Each LO Mgr.
Each appellant--(Registered Mail)
W. C. Helvey, P.O. Box 23, Apple Valley, Calif.(Registered Mail)
BLM Reading File
Attorneys' Reading File
Lands Staff Officer (2)
Appeals Unit (15)
FSRD
Each case file
HSP

SCHEDULE "A"

All serial numbers refer to the Los Angeles Land Office.

Serial No.	Name
0134874	Marjorie E. Doyle
0134875	George B. Cockrell
0134876	June J. Bisno
0134877	Frank S. Tipton, Jr.
0134878	Rudy B. Kipp
0134879	Helen S. Pratt
0134880	Leon S. Nozik
0134881	Louis J. Blotter
0134882	Vollie D. Grounds
0134883	Roy B. Smith
0134884	John F. Bozich
0134885	Frank Jos. Jablonski
0134886	Milton P. Barnwell
0134887	Louis A. DeMars
0134888	Helen R. Rouze
0134889	Helen H. Riser
0134890	John F. Ruby
0134891	Robert (NMI) Dusek
0134892	Paralee J. Aikins
0134893	William E. Hennessy
0134894	Leo L. Hastings
0134895	Guy A. Nollsch
0134896	Alta H. Scott
0134897	Robert B. Nelson
0134898	Audrey E. Bush
0134899	Florence I. Van Zile
0135066	Thomas E. Wall
0135067	William A. Wall
0135068	Bohumil Dusek
0135069	Clementine R. DeNise
0135070	Ervin F. Dusek

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3 copies

In reply refer to:

Los Angeles 090914
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 23, 1955

Registered Mail
Return Receipt Requested

DECISION

Leroy L. Scott : Small Tract Lease

Action of Manager Affirmed

Small tract lease Los Angeles 090914, involving the N½NW¼NE¼NE¼ sec. 3, T. 6 N., R. 8 W., S.B.M., California, 5 acres, was issued to Leroy L. Scott on October 31, 1951, for a 3-year term, with option to purchase the tract within one year from the date of the lease, under the Small Tract Act of June 1, 1938 (52 Stat. 509; 43 U.S.C., sec. 682a), as amended.

Mr. Scott applied to purchase the tract on July 6, 1954, and by Land Office decision dated February 18, 1955, the application to purchase was rejected on grounds that the frame structure erected on the land, consisting of a 10 x 12-foot cabin attached to a concrete slab foundation, while substantial and permanent, was not comparable to existing improvements in the vicinity, it being much smaller, poorer in appearance, and not within the standards of the Small Tract Act, that there was no visible evidence of compliance with local building and sanitation codes and that no sanitary facilities were found on the tract, the minimum requirements being an outside toilet. Inasmuch as the lease had expired on October 30, 1954, the Manager allowed Mr. Scott 30 days within which to apply for reinstatement and renewal of the lease for a one-year term, during which extension he might increase the size of the structure to at least a 12 x 16-foot substantial building and provide sanitary facilities to meet the local codes. Mr. Scott applied for renewal of the lease on April 13, 1955, and the record shows that the lease was renewed for a one-year term, or until October 31, 1955.

Mr. Scott complained of the rejection of his application to purchase in letters to the Land Office on April 13, 1955, and to the State Supervisor of the Bureau for California on June 17 and June 20, 1955, and he submitted a second application to purchase the leased tract on June 8, 1955. By letter of July 8, 1955, Mr. Scott referred his complaint on the rejection of his purchase application to the President of the United States. No formal appeal as provided for in

Departmental regulations (43 CFR 221.47-221.52, Rules of Practice, Circulars 1749 and 1818, copies enclosed) was submitted by Mr. Scott within the time allowed therefor by the Manager's decision. However, the allegations contained in the correspondence referred to and in accompanying papers which Mr. Scott submitted have been considered to constitute his appeal, and they have been reviewed thoroughly along with the complete record, including additional data assembled as the result of reexamination of the lands by this Bureau in August 1955.

Mr. Scott's complaints on the rejection of his purchase application may be summarized as follows: that the Bureau has sold tracts on which there were cabins no larger nor more attractive than his, that there are no improvements of any kind in the vicinity of his cabin site from which a comparison might be made, and that his cabin was constructed under county supervision (building permit #E28753B) and it is substantial and permanent and of a size generally understood by lessees to be acceptable at the time it was constructed. Mr. Scott questioned whether the Small Tract Act was being administered properly by the Los Angeles Office. He stated that newspaper releases encouraged the filing of small tract applications, that thousands of such tracts are improved and that his search of the Los Angeles county records disclosed only a very few of these thousands have been sold. He also criticized the office for failing to specify the minimum requirements for acceptable structures under small tract leases at the time of issuance of the leases.

By section 2(a) of the lease (which was the standard form of lease in effect at the time Mr. Scott's lease was issued), Mr. Scott agreed to construct substantial improvements on the land appropriate to the use for which the lease was issued, to the satisfaction of the Regional Administrator (now State Supervisor) of the Bureau of Land Management. The cited section of the lease provided that plans might be submitted to the officer mentioned for approval in advance of construction.

The report of reexamination of the leased tract, made in August 1955, substantiates the facts revealed by prior examination except for the fact that the building constructed by the lessee is in fact an 8 x 10-foot cabin rather than 10 x 12, as previously reported. The reports show the building is of frame construction covered on the exterior by tar-paper material of a simulated brick design, that it rests on a concrete slab foundation, that it consists of one room with two windows and a door, and that its general appearance is poor. No sanitary or toilet facilities have been provided on the tract by the lessee. The supplemental report discloses further that the tract is less than 1/4 mile distant from three tracts which have been sold under the Small Tract Act in 1955, and which are situated also in the NE$\frac{1}{4}$ sec. 3, and approximately 1$\frac{1}{4}$ miles distant from four tracts in the NE$\frac{1}{4}$ and NW$\frac{1}{4}$ sec. 1, also sold in 1955. The improvements constructed on the tracts approved for sale were reported to be much superior to Mr. Scott's cabin with respect to size, appearance, liveability and permanency of structure. A check at the Los Angeles County Division of Building and Safety Office at Palmdale, California, on August 11, 1955, revealed that the lessee was granted a building permit (#23732, July 30, 1953) to erect a cabin, that the cabin was examined by the building inspector on June 30, 1954, and found deficient and since no corrective action had been taken by the lessee, final approval of the building has not been issued by the County Office. The deficiencies cited by the building inspector were inadequate diagonal bracing, headers and trimming and inadequate foundation. With respect to the foundation, it was noted that the cement slab foundation was set at ground level, whereas the county building code requirement stipulates it should be 8 inches below grade and 6 inches above grade.

Information of record discloses also that approximately 5,000 applications to purchase small tracts have been approved since the enactment of the Small Tract Act and that during the current year approximately 1,800 tracts have been approved for patent. It is reported that none of these tracts supported structures of the dimensions of Mr. Scott's cabin. A few 10 x 12-foot buildings of good appearance and substantial construction were accepted, although as a general rule, such structures are not considered suitable for residence.

While there was no specific standard specified in the lease for minimum requirements of acceptable structures, the lease provided that the structure should be "appropriate for the use for which the lease is issued."

Based upon all available evidence assembled with the record, it does not appear that the cabin constructed by Mr. Scott is suitable for a homesite. Consequently, the decision of the Los Angeles Land Office rejecting the purchase application, is affirmed.

In view of the expiration of the extended lease on October 31, 1955, Mr. Scott is allowed 30 days from notice hereof within which to apply for reinstatement and renewal of the lease for an additional year to afford him opportunity to enlarge the structure to at least a 12 x 16-foot substantial building of good appearance, to correct the deficiencies in building cited by the county building inspector, and to provide adequate sanitary facilities which will meet the local codes. The application for renewal should be submitted to the Los Angeles Land Office and should be accompanied by a filing fee of $10 and advance rental of $5, as provided in 43 CFR 257.8 and 257.9, Circular No. 1899 attached. Failure to apply for renewal of the lease will result in final rejection of the application to purchase and the lessee will be required to remove or forfeit his improvements as provided in 43 CFR 259.19(c).

This decision is subject for 30 days to the right of appeal to the Secretary of the Interior. If an appeal is filed, it must conform to the provisions of 43 CFR 221.75 and 221.76.

Edward Woozley
Director

Enclosures

Copy to: Leroy L. Scott (Registered Mail)
Each AO (1)
Each SO (3)
Each LO (3)
Lands Staff Officer (2)
Attorneys' Reading File
BLM Reading File
Appeals Unit (12)
Case File
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A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

In reply refer to:

Los Angeles 0120320
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 8, 1956

Registered Mail
Return Receipt Requested

DECISION

James Costello	:	Small Tract

Manager's Decision Affirmed

Small tract lease offer Los Angeles 0120320 of James Costello was rejected by the Manager, Land Office, Los Angeles, California, because the offeror failed to describe the particular 5-acre tract desired. When the description of the 5-acre tract desired was supplied, a valid intervening small tract lease offer had been filed and lease offer Los Angeles 0120320 was rejected by notice dated July 6, 1955.

The offeror, Costello, has appealed to the Director from the rejection. In the appeal the appellant alleges that the description given in the lease offer is sufficient.

An examination of the record discloses that in the lease offer the land desired was described as 5 acres in sec. 13, T. 1 S., R. 4 E., S.B.M. In the space provided for the legal subdivision there was inserted the serial number of a former small tract lease. This is not a satisfactory legal description.

Under the regulations, 43 CFR sec. 257.7(b), it is provided that " * * * Where the land has been classified the offeror should describe the selected tract in accordance with the classification order or plat of survey." Section 257.7(c) of 43 CFR provides that "If an offer to lease is not properly executed * * * it will not be accepted * * * ".

The 5-acre subdivision desired was not shown on the lease offer either in accordance with the classification order or in accordance with the plat of survey, but an attempt was made to identify the tract desired by referring to a serial number of a former small tract lease that apparently embraced the tract desired by Mr. Costello. This is not the proper method of describing land in an application and is not in accordance with the regulations. To describe the land in accordance with the official plat of survey, the desired tract, not to exceed 5 acres, should be described by aliquot parts of a legal subdivision. Such an omission from an application is a fatal defect and such application may not be considered as filed until the proper description is supplied. It was the responsibility of the applicant to complete the application accurately. He cannot shift any part of that responsibility to the personnel of the Land Office. D. Miller, A-26854 (June 21, 1954).

In this case, the proper description was not filed until October 4, 1954, which is the effective date of filing of the application. In the meantime, on September 30, 1954, an intervening small tract offer to lease was filed which was proper in every respect. The intervening offer is therefore the first proper offer and must be given priority over the appellant's offer Los Angeles 0120320.

Accordingly, based on the above, the Manager's decision of July 6, 1955, is affirmed.

The decision of this office is subject to the right of appeal to the Secretary of the Interior within 30 days from receipt of notice hereof. If an appeal is filed, it must conform to the regulations contained in the attached Circular No. 1818.

For the Director:

Attachment

Distribution:
- Mr. William R. Law, Attorney for Appellant (Registered Mail)
- Mr. James Costello (Regular Mail)
- Mrs. Ellen Wilkinson (Regular Mail)
- Hon. Thomas H. Kuchel (U. S. Senator)
- Each AO (1)
- Each SO (3)
- Each LO (3)
- Lands Staff Officer (2)
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 20, 1956

In reply refer to:

Los Angeles 0102037
et al 1/
5.04g

Registered Mail
Return Receipt Requested

DECISION

* Peter (NMI) Lundberg 1/ et al
Appellants

Small Tracts Conflict
With State Indemnity Selection

State of California,
Appellee

Decision of Manager Affirmed

Peter (NMI) Lundberg and four others 1/ have appealed to this office from a decision dated June 14, 1955, by the Manager of the Land Office at Los Angeles, California, which rejected their applications filed under the Act of June 1, 1938 (43 U.S.C., 1952 ed., sec. 682a), as amended, for small-tract leases for land located in the SE$\frac{1}{4}$SE$\frac{1}{4}$ sec. 21, T. 1 S., R. 4 E., S.B.M., California, and dismissed their protests against the approval of the selection of that tract (Los Angeles 0118712) by the State of California under the Act of February 28, 1891, and sec. 7 of the Act of June 28, 1934, as amended.

The records show State Indemnity Selection Los Angeles 0118712 was filed by the State of California July 26, 1954,

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1/ Alice May Thompson, Los Angeles 0102745
* Mrs. Jessie M. Rowland, Los Angeles 0102603
** Mrs. Elizabeth Lillian Jones, Los Angeles 0102746
Sidney Thomas Morris, Los Angeles 0109952

* Represented by Gertrude D. Hartman, see page 3 of decision
** Represented by Alice M. Thompson, see page 3 of decision

f.0

(their reference number SIS 10700, Los Angeles SWO 5840) for 40 acres in the E$\frac{1}{2}$SE$\frac{1}{4}$ sec. 21, T. 1 S., R. 4 E., S.B.M., which was amended on August 10, 1954 to read the SE$\frac{1}{4}$SE$\frac{1}{4}$ said sec. 21, containing 40 acres, for the reason that the State selection originally filed did not comprise a full legal subdivision.

The rejection of the small tract applications by the Manager was based upon two field reports made March 18, 1948 and June 8, 1955, which state that the SE$\frac{1}{4}$SE$\frac{1}{4}$ said sec. 21, is not suitable for small tract purposes because this tract lies within the flood channel of the Big Morongo Creek and is subject to flooding during heavy runoff periods. The latter field report classifies the land as appropriate for disposal to the State pursuant to their pending selection

The appellants, in substance, deny that the lands are subject to inundation but submit no evidence or acceptable proof to support their contention.

By the Act of March 3, 1853 (10 Stat. 246), Congress granted to the State of California certain sections of public land in each township for school purposes.

Under the Act of February 28, 1891 (43 U.S.C., 1952 ed., sec. 851), where prospective school-land sections had been reserved or otherwise disposed of by the United States as of the time when the grant of such sections to a State would otherwise have become effective, the State may select other lands in their place.

The retention of the land in Federal ownership does not appear to be required for any public program. The disposal of the land to the State will relieve the Federal Government of certain administrative responsibilities which must be assumed if the land were classified for small tract purposes. At the same time, it would reduce the obligation of the Federal Government to the State under the grant of 1853.

The Department has held that the classification of land as proper for selection by a State under a land grant should not be refused merely because the land is suitable for classification under the Small Tract Act. See State of Nevada, A-25832, May 12, 1950. In this case the reason for giving preference to the State becomes more cogent since the land has been found to be unsuitable for small tract purposes.

Accordingly the decision of the Manager is affirmed. This decision is subject for a period of 30 days from the date of its receipt to the right of appeal to the Secretary of the Interior. If an appeal is filed it must conform to the provisions of 43 CFR 221.75 and 221.76. See Circular 1818 attached.

In this case one Gertrude D. Hartman appears to represent appellants, Mrs. Jessie M. Rowland, Los Angeles 0102603, and Peter Lundberg, Los Angeles 0102037. Also appeallant, Alice M. Thompson, Los Angeles 0102745, appears to represent Elizabeth Lillian Jones, Los Angeles 0102746. In each of the cases identified herein, the authority to represent the appellant is merely a statement authorizing the person named to represent them. The governing regulations 43 CFR, sec. 1.3 provide in pertinent part as follows:

> "(1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1954, shall be permitted to practice before the Department.
>
> "(2) Attorneys at law who are admitted to practice before the courts of any State, Territory, or the District of Columbia will be permitted to practice without filing an application for such privilege.
>
> "(3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of (i) a member of his family; * * *"

It does not appear from the respective case files that either Gertrude D. Hartman or Alice M. Thompson is qualified under any of the foregoing provisions and therefore each is without authority to represent the respective small tract applicants in the pending appeals. Therefore, each appellant, rather than their representatives, must be supplied with a copy of this decision in accordance with established procedures.

For the Director

Attachment: Circuler 1818

Distribution:
Hon. Hubert H. Humphrey
Hon. James Roosevelt
Mr. Fred Gabler, Atty for Sidney Thomas Morris (Registered Mail)
Mr. Sidney Thomas Morris (Regular Mail)
Mr. Peter (NMI) Lundbert, (Registered Mail)
Mrs. Jessie M. Rowland, (Registered Mail)
Mrs. Elizabeth Lillian Jones, (Registered Mail)
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In reply refer to:
Los Angeles 082652
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 22, 1956

Registered Mail
Return Receipt Requested

DECISION

Abraham Kurnick : Small Tract
:

Manager's Decision Affirmed

Abraham Kurnick has appealed from a decision of the Manager of the Los Angeles Office dated April 5, 1955 which rejected his application for renewal of his small tract lease issued May 19, 1950.

Appellant asserts without corroboration that the reasons for not constructing improvements within the required 5 years were due to severe illness and financial difficulties arising therefrom.

Renewals will be approved only upon a satisfactory showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and the non-renewal of the lease would work an extreme hardship on the lessee. (Cir 1899 par 257.15 (c)).

It is felt despite appellants asserted difficulties some evidence of good faith should have been shown toward commencing improvements within the 5 years allowed. Since no improvements of any sort have been attempted it does not appear that non-renewal of the lease would work an extreme hardship on appellant.

Accordingly, the Manager's decision is affirmed.

This decision is subject to the right of appeal to the Secretary of the Interior within 30 days from notice hereof upon Mr. Kurnick. Any appeal filed must conform to the requirements of 43 CFR 221.75 and 221.76, contained in Circular No. 1818 attached.

For the Director:

A. H. Kur

Attachment: Circular 1818

Distribution:

Mr. Abraham Kurnick (Registered Mail)
Each AO (3)
Each SO (3)
Each LC(3)
Lands Staff Officer (2)
Case file
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BLM Reading File
AU (25)
Attorney's Reading File
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UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

In reply refer to:

Los Angeles 0122931
5.04g

March 26, 1956

DECISION

Registered Mail
Return Receipt Requested

Roy H. Davis : Small Tract
:

Manager's Decision Affirmed

Roy H. Davis has appealed from a decision of the Manager, Los Angeles Office, dated May 18, 1955 rejecting his small tract application because of a prior filing and issued lease to one O'Neil under LA 0119230.

Appellant contends that the Manager told him the land was open and authorized him to commence construction as the lease would be issued. After laying some concrete foundation he received the decision rejecting his application.

It is well settled that reliance by a private person on information furnished them by an employee of the Bureau cannot operate to vest in such a person any right that is not authorized by law. Charles L. Day, A 26233 (August 31, 1951); William A. Parker, 13 L.D. 734; Catherine Blankenburg, A-25947 (December 7, 1950); R. M. Harris, A-26216 (July 24, 1951).

Serial numbers are generally assigned in the order applications are received and applications are usually considered in that sequence. The record shows also that appellant's application LA 0122931 was filed December 10, 1954 and the prior lease applicant, O'Neil on August 16, 1954 bearing LA 0119230.

Based on the record evidence, the awarding of the small tract to a prior applicant was proper. The decision of the Manager is accordingly affirmed.

This decision is subject to the right of appeal to the Secretary of the Interior within 30 days from notice hereof upon Mr. Davis. Any appeal filed must conform to the requirements of 43 CFR 221.75 and 221.76, contained in Circular No. 1818 attached.

For the Director:
A. H. Kerr

Attachment Circular 1818

Distribution:
Mr. Roy H. Davis, (Registered Mail)
Hon. Thomas H. Kuchel, U.S.S.
Each AO (3)
Each LO (3)
Each SO (3)
Alaska OS
Lands Staff Officer (2)
Case file
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CWM

In reply refer to:
Los Angeles 089643
090086
091100
090121
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 16, 1956

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SACRAMENTO, CALIF.
MAY 1 - 1956
A.M. 7|8|9|10|11|12|1|2|3|4|5|6 P.M.

DECISION

Elsie Hermer :
Ruth Evelyn Flick :
Howard Chipman Bauckman : Small Tract
Robert K. Williams :

Manager's Decisions Reversed
Cases Remanded

The above parties have appealed from the decisions of the Manager of the Los Angeles Office dated April 26, 1955, rejecting their applications to purchase under the Small Tract Law "because their cabins were not sufficiently large * * * and not comparable to existing improvements in the vicinity."

Appellants contend they were told by the Manager that the necessary requirements must comply with the building code of the county where the property is located. Each Appellant complied therewith and had contractors erect their vacation cabins accordingly, which after completion were "duly approved and officially O.K.ed by the building inspector of the county office." They allege that many other cabins of the same size in the same area have been built, and that as far as sanitary facilities are concerned, no mention of this requirement was made prior to the rejection of their application. Each Appellant is agreeable to meeting any such requirement within two weeks if given notice and opportunity to comply therewith.

Field examination shows that each of the cabins is of substantial construction and attractively finished. The record does not disclose that the lessees were ever informed of the standards to be expected of them. The appellants claim that they were informed that compliance with county building codes would be sufficient, which claim stands undisputed in the record. In view of these circumstances and in view of the low appraised value per tract ($75. or $100. each), there is nothing in the record to challenge the good faith of the applicants.

Nothing in the record supports the allegation that the appellants' improvements "are considered a detriment to property values by adjoining land owners and lessees." In the absence of such evidence, no consideration can be given to its implications.

The Appellants recognize by their offer to install necessary sanitary facilities the reasonableness of that requirement.

It is felt that Appellants have substantially complied under the circumstances and should be allowed a reasonable time to construct sanitary facilities consonant with local Department of Health requirements. Upon such compliance final certificate is authorized.

For the above reasons the Manager's decisions are reversed and the cases remanded for appropriate action by the Los Angeles Land Office.

For the Director:

G. H. Kerr

Attachment

Distribution:

Mrs. Elsie Hermer
Mrs. Ruth Evelyn Flick
Mr. Howard C. Bauckman
Mr. Robert K. Williams
Each AO (3)
Each SO (3)
Each LO (3)
Alaska OS
Lands Staff Officer (2)
BLM Reading File
Each Case File
FSRD
AU (25)
Attorneys' Reading File
CLM
Area Counsel (Anchorage) 2
L & M Officer (Anchorage) 2
District Manager (Juneau) 2

In reply refer to:

Los Angeles 082111
5.04g

RECEIVED
LAND OFFICE
SACRAMENTO, CALIF.
JUN 25 1956
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 14, 1956

Registered Mail
Return Receipt Requested

DECISION

Gilbert V. Levin : Small Tract

Decision of Manager Affirmed

Gilbert V. Levin has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated January 13, 1955, rejecting his application to renew his small tract lease of Lot 29, sec. 24, T. 4 N., R. 3 W., S.B.M., California, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) for the reason that Mr. Levin had not placed the required improvements on the land.

The records disclose that lease Los Angeles 082111 was issued to Mr. Levin for the described tract on April 18, 1950, for a five-year term. The land was classified for lease and sale. Mr. Levin applied to renew his lease on January 12, 1955, but since his renewal application showed that he had not constructed any improvements on the land as required by the terms of his lease, the renewal application was rejected by the Manager's decision of January 13, 1955.

The appellant asserts, without corroboration, that approximately a year after his lease was issued he had changed his residence from California to accept employment in Washington, D. C., where he has continued to reside, but that he intends to return to California in the future and make his residence there; and that he had not been able to construct the required improvements on the land because of a lack of funds and time for travel.

The applicable Departmental regulation (43 CFR 257.15; Circular 1899, dated January 10, 1955) in effect when Mr. Levin's lease terminated, relating to renewals of small tract leases of land classified for lease and sale, provides that renewals will be approved only upon a showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee.

In his lease Mr. Levin agreed to construct on the land improvements appropriate for the use for which the lease was issued. Compliance with this requirement was necessary before the lessee could purchase the land. It does not appear that any of the reasons offered by the appellant should excuse the obligation imposed by the lease to construct improvements on the leased land during the original term of the lease. Furthermore, since no improvements of any sort have been placed on the tract, it is not indicated that nonrenewal of the lease would work an extreme hardship on the appellant. Cf. Ernest J. Van Loon, A-27087 (April 12, 1955); Evelyn Adams Lyon, A-27245 (December 28, 1955).

Accordingly, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:

Attachment

Distribution:
- Mr. Gilbert V. Levin (Registered mail)
- Each AO (3)
- ~~Each SO~~ (3)
- Each LO (3)
- Lands Staff Officer
- Area Counsel (Anchorage) 2
- L & M Officer (Anchorage) 2
- District Manager (Juneau) 2
- Alaska OS
- Case file
- FSRD
- BLM Reading file
- Attorneys' Reading file
- AU (25)
- CLS

JUN 25 1956
BUREAU OF LAND MANAGEMENT
STATE OFFICE
SACRAMENTO 14, CALIFORNIA

LO Copy

AH

In reply refer to:

Los Angeles 082476
5.04g

RECEIVED
LAND OFFICE
SACRAMENTO, CALIF.
JUL 16 1956
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 28, 1956

Registered Mail
Return Receipt Requested

DECISION

Eugene Leon Mleczko : Small Tract

Decision of Manager Affirmed

Eugene Leon Mleczko has appealed from the decision of the Manager of the Land Office, Los Angeles, California, rejecting the application to renew his small tract lease of Lot 6, sec. 4, T. 12 S., R. 1 W., S. B. M., California, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) as amended, for the reason that Mr. Mleczko had not placed the required improvements on the land.

The records disclose that lease Los Angeles 082476 was issued to Mr. Mleczko for the described tract on April 26, 1950, for a five-year term to be used for a cabin site. Mr. Mleczko applied to renew his lease on February 28, 1955, but since his renewal application showed that he had not placed any improvements on the land as required by the terms of his lease, the renewal application was rejected by the Manager's decision of March 2, 1955.

In a letter, received March 22, 1955, which has been accepted as an appeal, Mr. Mleczko stated that he had exercised as much diligence as possible to comply with the terms of his lease regarding the required improvements; that he had roughly located the corners of the tract and had selected a suitable cabin site, but that a 400-foot cliff between the tract and the closest road had prevented him from hauling building materials to the site; and that he was attempting to obtain assistance from other tract occupants in the construction of a road to the site because he could not bear the cost alone.

The applicable Departmental regulation (43 CFR, 1954 ed., sec. 257.14) in effect when the appellant applied for renewal of his small tract lease provided that an offer for renewal must be filed

LO

not more than six months or less than 60 days prior to the expiration of the lease, and that a "lease for land classified for lease only will not be renewed if satisfactory improvements have not been constructed thereon during the lease term." This regulation further provided that a "lease for land classified for lease and sale is not subject to renewal, except upon a showing satisfactory to the Manager, corroborated by the statement of at least one witness, that the lessee's failure to apply for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee."

The records in the case do not disclose whether the tract in question is classified for lease and sale or for lease only. However, this omission is not considered material as the lease would not be subject to renewal under either classification.

In his lease Mr. Mleczko agreed to construct on the land improvements appropriate for the use for which the lease was issued. By his own admission, Mr. Mleczko has placed no improvements on the land. Compliance with the requirement regarding improvements was necessary, as set forth in the Departmental regulation quoted above, before a lease of a small tract classified for lease only could be renewed. cf. Arthur F. Dether, A-26382 (July 29, 1952), Marvin M. Liblick, A-26324 (February 11, 1952). Furthermore, since no improvements of any sort were placed on the land, it is not indicated that nonrenewal of the lease would work an extreme hardship on the appellant. If extreme hardship is not shown, renewal of a lease of a small tract classified for lease and sale would not be in order. cf. Evelyn Adams Lyon, A-27245 (December 28, 1955). It is unnecessary for the purpose of this decision to determine whether Mr. Mleczko's failure to apply for sale of the tract is justified. Therefore, there appears to be no basis on which the small tract lease in question may be renewed.

It is noted that Mr. Mleczko failed to comply with the Departmental regulation, set forth above, requiring applications for renewal of small tract leases be filed not less than 60 days prior to the expiration of the lease. Therefore, the Manager also would have been justified in rejecting Mr. Mleczko's renewal application, which was filed February 28, 1955, for the reason that it was filed less than 60 days prior to the expiration of the lease on April 26, 1955. Minta Harper Dozier, A-27221 (November 17, 1955).

For the reasons indicated above, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:
A. H.

Attachment

Distribution:
Mr. Eugene Leon Mleczko (Registered mail)
Lands Staff Officer (1)
CLS
Appeals List No. 1

DEPT. OF INTERIOR
SACRAMENTO, CAL.

JUN 13 4 01 PM 1957

BUREAU OF
LAND MANAGEMENT

LAND OFFICE

Reversing BLM decision 3-18-57

In reply refer to:

Los Angeles 073967
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 19, 1956

Registered Mail
Return Receipt Requested

DECISION

Henry Offe : Small Tract Lease
:
:

Decision of Manager Affirmed

Mr. Henry Offe has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated April 11, 1955, rejecting his application to renew his small tract lease of the W½SE¼SW¼NW¼, sec. 16, T. 1 S., R. 4 E., S.B.M., California, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C., 1952 ed., 682a) for the reason that Mr. Offe had not placed the required improvements on the land and had not satisfactorily explained his failure in this regard.

The appellant's lease was originally issued on April 11, 1950, for a period of 5 years. The terms of the lease provided that the land had been classified for lease and sale and that the lessee agreed to construct "improvements appropriate for the use for which the lease is issued." The terms of the lease provided that the land was to be used for cabin site purposes. The terms also provided that the lessee could apply for renewal of the lease "not more than 6 months nor less than 60 days prior to the expiration thereof." This requirement is also stated in the Small Tract Regulations. (43 CFR 257.11, 1949 ed.; 257.14, 1954 ed.)

Appellant did not apply for renewal of the lease until April 6, 1955, which was not within the time limit imposed by the lease provision and the regulation. Even if he had, however, the application would still be held for rejection for the reasons below.

In his appeal the appellant states that he had made arrangements with a contractor to erect a "do-it-yourself" prefabricated cabin on the land. It is not alleged that any action other than the arrangements referred to has been taken in this connection. In fact, the contractor has asserted that it would be infeasible to attempt erection of a cabin on the site because of deep washes on the land which render it inaccessible. Appellant does not show, by any concrete evidence, that he has a workable plan to remedy this condition.

Appellant also states that he underwent two operations in 1953. This was some three years after the lease was issued.

The applicable Departmental regulation (43 CFR, 1955 Supp., 257.15) in effect when appellant's lease terminated, relating to renewals of small tract leases of land classified for lease and sale, provides that renewals will be approved only upon a showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee.

The explanation offered by appellant for his failure to comply with the obligations imposed upon him by the terms of the lease does not justify renewal of the lease under the circumstances. Likewise, the appellant has made no showing that non-renewal of the lease would work an extreme hardship on him. Cf. Ernest J. Van Loon, A-27087 (April 12, 1955); Evelyn Adams Lyon, A-27245 (December 28, 1955).

In view of the above, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:
Mr. Henry Offe (Registered Mail)
Hon. Harry R. Sheppard, House of Representatives
Lands Staff Officer (1)
Appeals List No. 1
HCS

In reply refer to:

Los Angeles 0118276
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 11, 1956.

Registered Mail
Return Receipt Requested

DECISION

William C. Ticknor : Small Tract

Decision of Manager Affirmed

Mr. William C. Ticknor has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated June 30, 1955, rejecting his application filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C., Sec. 682a) as amended for the reason that Mr. Ticknor's application conflicted with a prior application on the basis of which a small tract lease had been issued.

The records show that small tract application Los Angeles 0118276, filed by Mr. Ticknor for the N½NE¼SE¼NE¼ sec. 30, T. 4S., R. 6E., S. B. M., California, was stamped as received in the Land Office on July 12, 1954. The records further indicate that prior to this date small tract application Los Angeles 0117505 had been received, and on July 9, 1955 a small tract lease was issued on the basis of this prior application.

In his appeal Mr. Ticknor contends that his application was filed by his agent on June 20, 1954 but submitted no evidence to establish the filing date. Subsequent to the date Mr. Ticknor filed his appeal a statement dated August 16, 1955 was received from Mr. J. H. Pickard advising that he had filed the application on behalf of Mr. Ticknor and the filing date was July 12, 1954; and that he had so advised Mr. Ticknor.

Since the record establishes that Mr. Ticknor's application was not filed until July 12, 1954 and on that date there was on file a pending application for the same land, and there being no other reason shown to question the validity of small tract lease Los Angeles 0117505, it must be concluded that the Manager's decision in rejecting Mr. Ticknor's application was correct. Cf. Angelo Delparto, A-27110 (April 20, 1955) Accordingly, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

In the event of appeal, Mr. Ticknor must serve notice on the lessee under small tract lease Los Angeles 0117505 whose name and address may be obtained from the Land Office, Los Angeles, California.

For the Director:
G. H. Kerr

Attachment

DISTRIBUTION:
Mr. William C. Ticknor (Registered Mail)
Lands Staff Officer (1)
CLS
Appeals List No. 1

In reply refer to:

Los Angeles 066277
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 17, 1956

Registered Mail
Return Receipt Requested

DECISION

Helen Diana Ofner : Small Tract

Decision of Manager Affirmed

Helen Diana Ofner has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated July 7, 1955 rejecting her application to renew her small tract lease of $W\frac{1}{2}$ $NW\frac{1}{4}$ $S\frac{1}{2}$ of Lot 1 of $SW\frac{1}{4}$, T. 3S., R. 4E., SBM, California, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) as amended. The application was rejected because Miss Ofner had not placed the required improvements on the land.

The records disclose that small tract lease Los Angeles 066277 was issued for the described tract on July 7, 1950 for a five year term. The land was classified for lease and sale. In her application for the lease Miss Ofner agreed to build on the land "a substantial cabin" and the lease provided that the land was to be used for "cabin site" purposes. Miss Ofner applied to renew her lease on July 6, 1955 but since her renewal application showed that she had not constructed any improvements on the land as required by the terms of her lease, the renewal application was rejected by the Manager's decision of July 7, 1955.

In her appeal Miss Ofner stated that after the lease was issued she was married and went to Chicago where she lived until she was divorced; that following her divorce and return to Los Angeles she became ill and was unable to locate her records pertaining to her lease until near the expiration date of the lease; that her doctor has advised her to live on the desert; and that if her lease is renewed that she would start building immediately.

The applicable Departmental regulation, 43 CFR, 1955 Supp. 257.15(c), relating to renewal of small tract leases of land classified for lease and sale, provides that renewals will be approved only upon a showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee.

In her lease, Miss Ofner agreed to construct on the land improvements appropriate for the use for which the lease was issued. Compliance with this requirement was necessary before the lessee could purchase the land. It does not appear that any of the reasons offered by the appellant should excuse the obligation imposed by the lease to construct improvements on the leased land during the original term of the lease. Furthermore, since no improvements of any sort have been placed on the tract, it is not indicated that non-renewal of the lease would work an extreme hardship on the appellant. Cf. Ernest J. Van Loon, A-27087 (April 12, 1955); Evelyn Adams Lyon, A-27245 (December 28, 1955).

For the above reasons the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:
a.H. Swan

Attachment

DISTRIBUTION:
Miss Helen Diana Ofner (Registered Mail)
Lands Staff Officer
CLS
Appeals List No. 1

In reply refer to:
Los Angeles 093953
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 17, 1956.

Registered Mail
Return Receipt Requested

DECISION

Louise A. Hotz : Small Tract

Decision of Manager Affirmed

Louise A. Hotz has appealed from the decision of the Manager of the Land Office, Los Angeles, California dated April 11, 1955 rejecting her application to renew her small tract lease of SE¼NE¼SW¼SW¼, sec. 11, T. 9N., R. 2W., S.B.M., California, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) as amended. The application was rejected for the reason that Mrs. Hotz had not placed the required improvements on the land.

The records disclose that small tract lease Los Angeles 093953 was issued for the described tract on April 2, 1952 for a three year term. It was indicated in the lease that the tract was to be used for purpose of a residence and Mrs. Hotz agreed to construct on the land an "over-nite cabin". Mrs. Hotz applied to renew her lease, but since her renewal application showed that she had not constructed any improvements on the land as required by the terms of her lease, the renewal application was rejected by the Manager's decision of April 11, 1955.

In her appeal, Mrs. Hotz advised that she had spent $57.00 for improvements, which amount, she stated, was for a road assessment. She contends that because of this expenditure her lease should have been renewed.

The applicable Departmental regulation, 43 CFR, 1955 Supp., 257.15 (c), relating to renewal of small tract leases of land classified for lease and sale, provides that renewals will be approved only upon a showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee.

By the expressed terms of her lease Mrs. Hotz agreed to construct on the land improvements appropriate for the use for which the lease was issued, and the lease further provided that compliance with this requirement was necessary before the lessee could purchase the land. Her specific agreement was to construct on the land an "over-nite cabin" but she has not attempted to explain or to justify her failure to construct this improvement and to apply for purchase of the land. The payment of the $57.00 for the road assessment is not such an "improvement" as would meet the requirements of the regulations or the terms of the lease which contemplate a structure of a substantial nature be constructed on the leased tract.

For the reasons indicated above, it is not shown that Mrs. Hotz' failure to meet the requirements for sale of the tract is justified. Cf. Ernest J. Van Loon, A-27087 (April 12, 1955); Arthur F. Dether, A-26382 (June 29, 1952). Accordingly, the Manager's decision rejecting her renewal application is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:

A.H. Kerr

Attachment

DISTRIBUTION:
Mrs. Louise A. Hotz (Registered Mail)
Lands Staff Officer
CLS
Appeal's List No. 1

In reply refer to:

Los Angeles 091572
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 17, 1956.

Registered Mail
Return Receipt Requested

DECISION

Frank J. Guarnacci : Small Tract

Decision of Manager Affirmed

Frank J. Guarnacci has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated February 7, 1955, rejecting his application to purchase the E½SW¼SE¼SW¼ sec. 2, T. 1 N., R. 8 E., S. B. M., California, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) as amended. The application was rejected because Mr. Guarnacci had not placed the required improvements on the land during the term of his small tract lease.

The records disclose that small tract lease Los Angeles 091572 for the described tract was issued to Mr. Guarnacci on December 6, 1951, for a three-year term. The land was classified for lease and sale. It was indicated in the lease that the tract was to be used for recreational purposes and Mr. Guarnacci agreed to construct on the land a "cabin home." In his application to purchase the tract filed September 20, 1954, Mr. Guarnacci stated that he had placed on the tract a "cabin site," 8 x 12 feet, for winter and summer recreation, which had cost him approximately $300; and that he had also provided an outhouse on the tract. The tract was examined by a field examiner of the Bureau of Land Management on December 3, 1954, and he reported that the applicant had not provided any of the improvements stated in the purchase application and that there was no evidence of any other improvements on the land. On the basis of the field examination the application to purchase the tract was rejected.

In his appeal Mr. Guarnacci stated that he had placed a cabin on the tract as required by the regulations, but that it was removed because specifications of San Bernadino County regarding concrete were not met; that when the cabin was moved he called by telephone and informed the Los Angeles Land Office of this action and requested advice as to the procedure to follow to meet the required conditions, and that he was advised to wait until inspection of the tract was made and at that time he would be advised as to what to do. He also requested that he be granted an extension of his lease to allow him a reasonable length of time to correct improvements.

The Departmental regulation (43 CFR, 1953 Supp., 257.13) governing action on applications to purchase under the Small Tract Act at the time the purchase application was filed provided in relevant part:

> "The option to purchase will apply only to tracts classified for lease and sale, and will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at or after the expiration of one year from the date the lease was issued, provided the improvements required by the lease have been made, and the lessee or his successor in interest has otherwise complied with the terms and conditions of the lease * * * ."

The lease terms, which are printed on the reverse side of the application to lease form, include the following provisions:

> "2. The lessee agrees
>
> "(a) To construct upon the land, to the satisfaction of the Regional Administrator, Bureau of Land Management, substantial improvements appropriate for the use for which the lease is issued. Plans may be submitted to the Regional Administrator for approval in advance of construction.
>
> "(b) To observe all Federal, State, County, and other laws, regulations, and ordinances which are applicable to the premises, and to keep the premises in a neat and orderly condition."

As set forth in the regulation quoted above compliance with the requirement regarding construction of improvements on the leased tract was necessary before the lessee could purchase the tract. Since the field examiner's report showed that no improvements of any type were on the tract when it was examined, the Manager had no alternative but to reject the purchase application. It is highly doubtful that the cabin which the appellant stated was on the land and removed would have been sufficient to comply with the terms of the lease since the cabin, according to the appellant, did not conform to the county building regulations. Compliance with such regulations was required by the terms of the lease quoted above.

Regarding Mr. Guarnacci's contention that he was misled by the advice of a departmental employee to withhold action in complying with the requirements of his lease until after an inspection of the tract was made, the Department has consistently held that misstatement by a Government employee cannot supply an applicant's deficiency in complying with the law. Robert Uptain, A-26956 (October 25, 1954).

Furthermore, the record contains no basis for granting Mr. Guarnacci's request for an extension of his lease to permit him to place the required improvements on the land. The applicable regulation (43 CFR, 1953 Supp.,257.14(e)) in effect when the lease expired provided that a "lease for land classified for lease and sale is not subject to renewal, except upon a showing satisfactory to the regional administrator, corroborated by the statement of at least one witness, * * * that non-renewal of the lease would work an extreme hardship on the lessee." Since the lessee has no improvements on the land, it is not indicated that non-renewal of the lease would work an extreme hardship on him. Cf. Ernest J. Van Loon, A-27087 (April 12, 1956); Evelyn Adams Lyon, A-27245 (December 28, 1955). Also, it is not shown that the appellant applied for a renewal of his lease not less than 60 days prior to the expiration of the lease term as required by the regulations and the terms of his lease.

For the reasons indicated above, the Manager's decision is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34, inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:
A. H. Kerr

Attachment

DISTRIBUTION:
Mr. Frank J. Guarnacci (Registered Mail)
Lands Staff Officer
Appeals List No. 1
CLS

end 2.

3 copies

In reply refer to:

Los Angeles 0124059
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 25, 1956.

DECISION

Registered Mail
Return Receipt Requested

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Ralph Louis Walker : Small Tract

Manager's Decision Affirmed

Ralph Louis Walker has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Los Angeles Land Office dated January 25, 1955, rejecting Mr. Walker's Small Tract application filed January 10, 1955, because it was filed for land already under lease and not open for filing until January 17, 1955.

The land involved is the S½SW¼SW¼SE¼ of sec. 24, T. 1 N., R. 5 E., S.B.M., California. Mr. Walker held a Small Tract lease, Los Angeles 066486, on this land from January 16, 1950. This lease was expired January 16, 1955. Mr. Walker made no improvements upon the land as required and did not file an application for renewal within the time proscribed in the regulations but instead, filed a new application to lease, the rejection of which is the subject of this appeal.

The pertinent part of the regulations concerning small tract leases in effect at the time Mr. Walker's application was rejected provides that:

> Except in Alaska, small tract lease offers for lands in terminated small tract leases will be processed in the order in which they are filed after the lands become subject to appropriation. If conflicting lease offers are filed simultaneously, the rights of the applicants will be determined by a drawing, pursuant to Sec. 295.9 of this chapter. (Emphasis added) 43 CFR 257.20(c).

Since the land was under an existing lease at the time of Mr. Walker's application, it wasnot subject to appropriation and the application was properly rejected. The Manager's decision is affirmed.

This decision is without prejudice to the filing of a new application in accordance with the regulations and subject to any prior existing rights that may have arisen from the time the land was opened to application.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director
A. H. Kerr

Attachment

Distribution:

Mr. Ralph L. Walker (Registered Mail)
Lands Staff Officer (1)
CCS
Appeals List No. 1

In reply refer to:

Los Angeles 093811
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION

October 23, 1956.

Homer F. Harrison : Small Tract Lease

Manager's Decision Affirmed

Homer F. Harrison, the appellant, under Los Angeles 093811, who filed an offer to lease the W½SW¼SE¼NE¼ of sec. 15, T. 25S., R. 33E., Mount Diablo Meridian, California, under the Small Tract Act of June 1, 1938, as amended, has appealed to the Director from the rejection of his offer to lease by the Manager, Land Office, Los Angeles, California, dated April 16, 1956.

The appellant's offer to lease was rejected for the reasons that the land is embraced in a power site project withdrawal, a special use permit has been issued for this land, and the land was also withdrawn for use by the U. S. Forest Service.

The records disclose that on September 25, 1925, the lands sought were included in a withdrawal (No. 564 - Miscellaneous file 1238490), for a power site project, and that a portion of the lands was withdrawn for an administrative site on June 22, 1950. The records further show that on August 21, 1952, the lands applied for were included in a 5-year special land use permit Los Angeles 092953, and are also covered by an application for withdrawal (Los Angeles 0102996) filed by the U. S. Forest Service on March 23, 1953.

The appellant asserts that at the time of filing his offer to lease there were no U. S. Forest Service installations near the area; that since then the Forest Service has installed facilities to the south of the area, and its application for withdrawal is for a very small portion at the south end of subject 5 acre tract; and that the appellant is willing to exclude this small area from the tract as well as permit a right-of-way for road and water lines to provide access to the Forest Service water tank to the east of the tract for which the offer to lease is made. Mr. Harrison further states that the land to the west of the subject tract is being developed as homesites; that the area is not suitable for development as a power plant site, and that he is filing a petition with the Federal Power Commission to restore the land for leasing under the public land laws. He asks that this matter be held in abeyance pending final action by the Federal Power Commission and, in conclusion, requests notification of the date fixed for the hearing of this case.

The Small Tract Act permits the lease or sale only of "vacant, unreserved, surveyed public lands" which the Secretary of the Interior may classify as chiefly valuable for disposition under the terms of the act (59 Stat. 467; 43 U.S.C. 682a; 43 CFR 257.1). The land in question was "reserved from entry, location and other disposal under the laws of the United States" pursuant to section 24 of the Federal Power Act of June 10, 1920, as amended, (41 Stat. 1075, as amended, 49 Stat. 846; 16 U.S.C. 818; 43 CFR 103.1) as the result of the power site project withdrawal on September 25, 1925. There is no authority to open for entry, location or other disposal lands which have been withdrawn for power site purposes until such time as the Federal Power Commission informs the Secretary of the Interior that the value of the lands for power site purposes will not be injured or destroyed for the purposes of power development by location, entry and selection under the Public land laws. (Sec. 24, Fed. Power Act, Supra.)

The records show that the land embraced in said withdrawal which includes the land for which a lease offer was made by the appellant has not been restored for disposal. Since the land involved is within a power site project withdrawal under the Federal Power Act, it is not available for leasing under the Small Tract Act. Accordingly, the Manager's rejection of the lease offer was correct. Lee Kisner et al., A-27189 (November 7, 1955), Duane B. Smithers, A-25858 (May 31, 1950), Herbert Gerald Marks, A-25655 (June 14, 1949).

It is noted that the appellant contemplates filing or has filed a petition with the Federal Power Commission to make a determination under section 24 of the Federal Power Act that the lands sought be restored for leasing under the Small Tract Act and urges that further decision on his lease offer be withheld pending a determination by the Federal Power Commission.

An offer to lease involving reserved land will not be suspended pending a determination of restoration. Elmer U. Wright, A-26975 (September 27, 1954), Jack D. Watts, A-26488 (November 18, 1952), John D. Riley, A-25932 (September 20, 1950).

Having requested notification of a hearing, the appellant apparently assumed that oral hearings are held in all appeals. The Rules of Practice (43 CFR Part 221) do not provide for hearings as a matter of right on ordinary applications for public lands, as distinguish from contest proceedings. Leonard E. Noren, Harry C. Perry, A-27147

(August 1, 1955), George V. Franklin et al., A-26606, A-26608 (June 26, 1953). The rules do provide that an appellant must file a statement of reasons for an appeal, and he may file additional statements of reasons and written arguments or briefs within the 30-day period after filing of the notice of appeal.

In the event of favorable action by the Federal Power Commission upon the appellant's petition and if the land is subsequently classified for disposition under the Small Tract Act, the appellant will not be given any preference right or preferential treatment (43 CFR 103.2-103.3) upon the filing of a new offer for lease, other than veterans preference under the provisions of 43 U.S.C. 279, et seq. by reason of his service in World War II.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office with 30 days from notice hereof and must be accompanied by a $5.00 filing fee (in each case). Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:
G. H. Lu

Attachment

DISTRIBUTION:

Mr. Homer F. Harrison (Registered Mail)
Lands Staff Officer (1)
WHW
Appeals List No. 1

In reply refer to:

Los Angeles 0137822

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 15, 1956

Registered Mail
Return Receipt Requested

DECISION

Nugent Graham : Small Tract

Appeal Dismissed

Nugent Graham has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Los Angeles, California, dated September 7, 1956, which rejected his Small Tract application (Los Angeles 0137822) filed pursuant to the act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a).

The Manager's decision gave appellant a right of appeal to the Director as provided for in the Department's Rules of Practice. The pertinent parts of the Rules of Practice are Sections 221.1 to 221.3 inclusive, Title 43 Code of Federal Regulations.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98 ...."

Section 221.98 of the Rules of Practice provides:

> "Summary dismissal. An appeal to the Director will be subject to summary dismissal by the officer to whom it is made for any of the following causes:
>
> (a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; ....."

Appellant filed his notice of appeal October 11, 1956. A statement of reasons should have been filed not later than Monday, November 12, 1956, which was the first business day following Saturday, November 10, 1956, the thirtieth day after the notice of appeal was filed. No such statement has been received and no request has been made for an extension of time in which to file the statement of reasons as provided for by Section 221.97 of the Rules of Practice. The appeal is therefore dismissed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director

A. H. Fuerr

DISTRIBUTION:

Mr. Nugent Graham (Registered mail)
Lands Staff Officer
Appeals List No. 1
CCS

LAND OFFICE
BUREAU OF
LAND MANAGEMENT
JAN 28 10 20 AM 1957
SACRAMENTO, CAL.
DEPT. OF INTERIOR

In reply refer to:

Los Angeles 077569
5.04

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 27, 1956.

DECISION

Registered Mail
Return Receipt Requested

John C. Bladen : Small Tract

Decision of Manager **Modified**

Mr. John C. Bladen has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated April 5, 1956 rejecting his application to purchase the land embraced in his expired small tract lease, filed pursuant to the act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a). The application was rejected for the reason that the application to purchase was filed after the small tract lease on the land had expired.

The records disclose that small tract lease Los Angeles 077569 for the W½NE¼ of S½ Lot 1, sec. 6, T. 5N. R. 2W., S.B.M., California, was issued to Mr. Bladen on February 28, 1949 for a five year term. The land was classified for lease and sale, and the lease provided that the purchase price of the tract was $75.00 plus the cost of any necessary survey.

Mr. Bladen applied to renew his lease on December 28, 1953 but his application was rejected on January 11, 1954 because no improvements had been placed on the leased tract. By letter received March 1, 1954 Mr. Bladen advised that he had then complied with the lease terms by constructing a cabin on the land, and he applied to purchase the tract and enclosed $75.00 as the purchase price. He was advised by letter of March 9, 1954 from the Land Office to request reinstatement of his lease since his lease had expired on February 28, 1954, and to complete and return the purchase applications which were enclosed. Mr. Bladen complied with this letter and submitted his request for reinstatement of his lease and his purchase application on March 29, 1954. By decision dated April 25, 1955 the purchase application was rejected for the reason that the building Mr. Bladen had constructed on the land was disclosed by a Field Examination not to be sufficiently substantial to comply with the Small Tract Act; however, the decision gave Mr. Bladen 30 days to apply for another renewal in order for him to place his improvements in a satisfactory condition. On receipt of his formal application on May 16, 1955, Mr. Bladen's lease was renewed for 2 years from February 28, 1954.

The renewal lease expired on February 28, 1956 and on the following day an inquiry was received from Mr. Bladen advising of his desire to purchase the tract and requesting to be advised of the correct procedure to follow. He was forwarded an application to purchase which he completed and returned on March 21, 1956, and which showed that he had "a 12 x 16 cabin and necessary sanitary facilities" on the land. This application was rejected by the Manager's decision on April 5, 1956 as not being timely filed.

In his appeal Mr. Bladen contends that while his formal purchase application was not filed until after his lease had expired that he had actually applied to purchase the tract by a letter to the land office "before the expiration date of the lease". He further advised that after his original purchase application had been rejected that he had rebuilt his cabin to comply with the requirements of his lease and that this involved considerable cost, time, and inconvenience on his part; that he had invested in his cabin between $600.00 and $700.00 in building materials, and that he values his time spent at approximately $1,000.00. The Assistant to the Bureau's State Supervisor for California has advised that the improvements now conform to the requirements of the lease and regulations.

On the basis of the evidence of record it would appear that the Manager would have been justified in not renewing Mr. Bladen's lease after it had originally terminated on February 28, 1954, since Mr. Bladen did not construct any improvements on the land until after the original purchase application had been rejected on January 11, 1954; however, under the circumstances the Manager renewed the lease to afford Mr. Bladen the opportunity to place his improvements in satisfactory condition. Following the renewal of his lease Mr. Bladen at considerable cost in time and money constructed a substantial cabin and sanitary facilities on the leased tract. It appears that Mr. Bladen has now met the requirement of sale with the exception that he did not comply with the Departmental regulation, 43 CFR 257.13, which requires that an application to purchase a leased tract be filed during the term of lease. Mr. Bladen's letter dated February 29, 1956 was the first notice received after the lease was renewed that he desired to purchase the tract. This letter was received one day after the renewed lease had expired, and the formal applications to purchase (Forms 4-775a) were not received until March 21, 1956.

The applicant must be charged with notice that he had to apply for purchase prior to the expiration on February 28, 1956, of the lease as extended, since this requirement was provided in the above cited regulation, Cf. Minta Harper Dozier, A-27221 (November 17, 1955). Therefore, the Manager's decision rejecting his purchase application was technically correct; however, under the circumstances of this case it is indicated that administrative leniency should be allowed. Mr. Bladen has shown his good faith in constructing appropriate improvements on the leased tract after it had been determined that his original improvements were inadequate. Furthermore, should he now be required to remove his improvements it would reasonably be expected that the cost involved would greatly exceed the purchase price of the tract.

In the absence of any intervening rights and in order to prevent a hardship on the applicant it is believed that the circumstances of this case justify the sale of the tract to the applicant and warrant a waiver by the Secretary of the Interior of the regulation (43 CFR 257.15) requiring a purchase application for a leased tract be filed during the term of the lease. Therefore, if the applicant has in fact otherwise met all the conditions for purchase of the tract, it should be sold to him on the basis of his application to purchase received on March 21, 1956.

In view of the Secretarial waiver the Manager's decision is modified and the case is remanded for appropriate action consistent with this decision.

Edward Woozley
Director

Approved January 7, 1957

Hatfield Chilson
Assistant Secretary of the Interior

DISTRIBUTION:
Mr. John C. Bladen (Registered Mail)
Hon. Craig Hosmer, M. C.
Lands Staff Officer
Appeals List No. 1
CLS

In reply refer to:

Los Angeles 0105702
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION

January 11, 1957.

Morton Koeppel : Small Tract

Appeal Dismissed

Morton Koeppel has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Los Angeles, California, dated August 28, 1956, which rejected his application for renewal of small tract lease Los Angeles 0105702 issued under the Act of June 1, 1938, as amended (43 U.S.C. 682a).

Appellant was allowed 30 days from receipt of the decision in which to appeal. This is in accordance with the Department's Rules of Practice, 43 CFR 221.1 which provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> "...The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

The next section of the rules of practice, section 221.3 is as follows:

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98...."

Section 221.98 provides:

> "Summary dismissal. An appeal to the Director...will be subject to summary dismissal by the officer to whom it is made for any of the following causes:
>
> (a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;...."

Appellant's notice of appeal, timely filed, is as follows:

> "This is to notify you that I hereby appeal the decision made by you in regard to my renewal application for my small tract lease.
>
> "I enclose a check for $5 in payment of the filing fee."

The notice of appeal was not accompanied by a statement of reasons for the appeal and none has been submitted. No attempt has been made to show in what respect the Manager's decision is in error. Under the circumstances and in accordance with the Rules of Practice, the appeal cannot be considered and is therefore dismissed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

John B. [illegible]

Attachment

Distribution

Morton Koeppel (Registered Mail)
Lands Staff Officer
Appeals List No. 1
CCSpencer

appeal to Sec.

In reply refer to:

Los Angeles 0105764
0105962
5.048

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 24, 1957.

DECISION

Registered Mail
Return Receipt Requested

Frankie Azalee Johnson	:	Small Tract

Manager's Decision Reversed

Mrs. Frankie Azalee Johnson has appealed to the Director from the decisions of the Manager of the Land Office, Los Angeles, California, dated April 28, 1954 and June 5, 1956, which rejected her application, Los Angeles 0105764, offering to lease the S½NE¼NE¼SE¼, sec. 35, T. 7 N., R. 11 W., S.B.M., California, under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a), as amended.

The Manager's decision of April 28, 1954, stated that the application was rejected for the reason that the land involved has been classified for disposition as an isolated tract. The appellant filed an appeal protesting the classification of the land sought.

The Manager's decision dated June 5, 1956, informed the appellant that her application, Los Angeles 0105764, was rejected for the reason that there was an "Impending Classification" notice issued for this section giving veterans filing preference and that the tract has been awarded to a veteran, John R. Moran, Los Angeles 0105962, to whom a lease will issue, following the termination of her appeal period.

The appellant in her appeal from the second rejection asserts that her application was filed when no other application for that particular tract had been filed; that she, with others, had requested that the land be classified for disposition as small tracts; that she is the wife of a veteran; that, since she filed prior to Mr. Moran's application, Los Angeles 0105962, she should in all fairness be entitled to the tract; and that she petitions for a hearing. More than 30 days after filing her second appeal, the appellant submitted additional statements in support of her appeal. In substance, they repeat and amplify the contentions submitted with her notice of appeal.

The records disclose that notice of impending classification of the land which embraces the tract sought by the appellant was noted on the land office records at 9:00 a.m., January 17, 1951; that said land was classified for small tract purposes on March 2, 1951 under Order 262, published in 16 Federal Register 2194, granting veterans filing preference; that in view of conflicting applications which prevented classification, Order 262 was corrected on March 15, 1951 (26 Federal Register 2811), by deleting certain described land including the E½SE¼, sec. 35, T. 7 N., R. 11 W., S.B.M., California; that a Departmental decision, *Franklin P. Butts*, A-26801 (February 5, 1954), classified the SE¼ of sec. 35, T. 7 N., R. 11 W., S.B.M., for public sale as an isolated tract; that reconsideration of that Departmental decision on November 15, 1954, *Franklin P. Butts*, A-26801 Supp., resulted in setting aside the decision of February 5, 1954, and classified the E½SE¼ sec. 35, T. 7 N., R. 11 W., S.B.M., as suitable for small tract disposition; that on March 1, 1955, an accommodation classification under Order 439 was effected for the benefit of the individual small tract applicants whose petitions were of record on the date of classification.

John Rudolph Moran filed his application, Los Angeles 015962, on July 17, 1953, to lease the identical tract described in the appellant's offer. Similarly, his offer was rejected on April 28, 1954, for the reason that the land was classified for disposition as an isolated tract. Mr. Moran was allowed to appeal within 30 days from notice of rejection. He failed to file an appeal. On December 12, 1955, he was informed that the tract described in his offer had been reclassified as suitable for small tract disposition and was requested to furnish evidence of his military service to establish his entitlement to veterans' filing preference. A photostatic copy of the obverse side of his discharge from military service was received on January 3, 1956.

Since the factual data necessary to properly determine the issues on appeal are based upon matters of official records, the appellant's request for a hearing under 43 CFR 221.6 of the Rules of Practice is denied. *Leonard E. Koren, Harry C. Perry*, A-27147 (August 1, 1955).

In view of the notation on the records of the land office on January 17, 1951 of the notice of impending classification, it is obvious that the appellant's offer to lease filed on June 25, 1953, did not initiate the classification of the land embraced in her offer, and, therefore, she did not achieve a preference right, (43 CFR 257.6). The Manager's decisions of April 28, 1954, rejecting the offers of Mrs. Johnson and Mr. Moran were based upon the Departmental decision of February 5, 1954, Franklin P. Butts, A-26801, classifying the land involved as *suitable for public sale* as an isolated tract. Those decisions were proper.

Mr. Moran's failure to file an appeal was acquiescence to the Manager's rejection of his offer to lease and he thereby waived any rights he may have had under his offer, including, if applicable, veterans filing preference. By his inactivity it must be presumed that he abandoned his offer. It has been the long established and invariable rule of the Department that where an application for public land is rejected and the applicant fails to appeal within the time allowed for appeals, he loses whatever rights he had under his application. *C. T. Hegwer et al.*, 62 I.D. 77; *Edward Christman et al.*, 62 I.D. 127; *William D. Cunningham et ano.*, A-27297 (May 28, 1956).

The appellant, Mrs. Johnson, by virtue of her appeal from the Manager's decision of April 28, 1954, preserved her rights under her offer to lease, so that, on March 1, 1955, the date of issuance of the accommodation classification Order 439, pursuant to the supplemental Departmental decision of November 15, 1954 in the Butts case, reclassifying the land embraced in her offer as suitable for small tract purposes, she became entitled to reconsideration of her offer.

Although Classification Order 439, made no mention of veterans preference, it will be assumed for the purpose of this discussion that the 90-day preferred right of application accorded veterans was incorporated by said order's reference to the Small Tract Act of June 1, 1938, which was amended by the Act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279-284), granting filing preference to veterans. Mr. Moran's offer to lease, although junior to that of the appellant, by reason of its filing date, had a filing priority because of his military service. Nevertheless, upon his failure to pursue the remedy of appeal subsequent to rejection, his offer became a nullity long before Order 439 was issued and, therefore, was not to be considered under the reclassification order.

Thus, the Manager erred in his decision of June 5, 1956 holding that Mr. Moran was entitled to a lease by reason of his veterans preference.

In the light of the foregoing, there is no need to discuss whether veterans filing preference inures to the wife of a living veteran.

Accordingly, the Manager's decision is reversed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35 inclusive, and other pertinent sections of the Rules of Practice; Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of appeal, the adverse party to be served with notice thereof is Mrs. Frankie Azalee Johnson, 4824 Hersholt Avenue, Long Beach 11, California.

When this decision becomes final the case file will be returned to the Manager through the Bureau's Assistant State Supervisor at Los Angeles, California, for further appropriate action.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mrs. Frankie Azalee Johnson (Regular Mail)
Mr. John Rudolph Moran (Registered Mail)
Hon. Craig Hosmer (Regular Mail)
Hon. Thomas H. Kuchel (Regular Mail)
Lands Staff Officer
Each case file
WHW
Appeals List No. 1

affirmed A-27450 - 10-3-57
appeal to Sec.

In reply refer to:

Los Angeles 0119989
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 5, 1957.

Registered Mail
Return Receipt Requested

DECISION

Clyde O. Tarrant : Small Tract

Manager's Decision Affirmed

Clyde O. Tarrant, through his attorney, has appealed to the Director of the Bureau of Land Management from a decision by the Manager of the Land Office, Los Angeles, California dated June 30, 1955, rejecting his offer to lease the E½NW¼SW¼NW¼ Sec. 32, T. 6 N. R. 8 W., S.B.M., California, under the Small Tract Act, as amended (43 U.S.C., 1952 ed., sec. 682a). The reason for the rejection was that the former lessee of this tract had applied to purchase it prior to the filing of appellant's offer.

Appellant takes no exception to the rejection of his offer to lease the above-described tract, but states that it is not the land he had in mind and desired. He asserts that an employee of the Land Office gave him an incorrect description of the particular tract he desired, and that before he learned of the error another applicant had filed on the tract in which he was interested. The appellant urges that in the circumstances and since the time for filing on the tract he intended to apply for has expired, he should be permitted to amend his offer to describe the desired tract with priority as of the date his original offer was filed.

It is unfortunate if the appellant relied upon advice of a Bureau employee to his detriment. However, the Land Office maintains plats of survey and tract books which are open to public inspection and from which the proper description and current status of public lands may be ascertained, and it is well settled that reliance by a private person on information furnished to him by an employee of the Bureau cannot operate to vest in such a person any right which is not authorized by law. Charles L. Day, A-26233 (August 31, 1951) The Department has repeatedly held that an amendment of an application is effective for purposes of priority from the date the amendment is received.

Since the tract described in the appellant's offer was embraced in a prior application to purchase, the rejection of appellant's offer was proper and is hereby affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director

DISTRIBUTION
Louis C. Menotti, Attorney for Appellant (Registered Mail)
Clyde O. Tarrant (Regular Mail)
Lands Staff Officer
Appeals List No. 1
BF

DEPT. OF INTERIOR
SACRAMENTO, CAL.
FEB 25 2 37 PM 1957
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

In reply refer to:

Los Angeles 0105702
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 12, 1957.

Registered Mail
Return Receipt Requested

DECISION

Morton Koeppel — Small Tracts

Decision of January 11, 1957, Vacated
Manager's Decision Affirmed

By decision of January 11, 1957, the appeal of Morton Koeppel was dismissed for the reason that he had failed to file a statement of reasons in support of his appeal as required by the Department's Rules of Practice. On September 20, 1956, Mr. Koeppel timely filed in the Land Office at Los Angeles, California, a notice of appeal from the Manager's decision of August 28, 1956, rejecting his application for renewal of his small tract lease, Los Angeles 0105702. Thereafter, on October 2, 1956, a letter was received from Mr. Koeppel setting forth the reasons for his appeal. This letter preceded the case file, however, and through an oversight was not incorporated in the record when the case file was received from the Land Office. The letter was timely received and Mr. Koeppel's appeal will be considered. The decision of January 11, 1957, is vacated.

Mr. Koeppel filed an offer to lease on June 23, 1953, under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a), for the W½NW¼NW¼SW¼ of sec. 4, T. 5 S., R. 6 E., S.B.M., California. The land was classified for lease and sale and a lease issued to Mr. Koeppel for a term of three years effective October 6, 1953. The land was to be used for recreation purposes and Mr. Koeppel agreed to place improvements upon the land in the nature of a summer home or cottage. The improvements were to be substantial improvements appropriate for the use for which the lease was issued and constructed to the satisfaction of the Regional Administrator, Bureau of Land Management. The lease contains an option to purchase whereby, after the expiration of one year from the date of the lease, the lessee may purchase the land provided he had made the improvements required and fully complied with the terms and conditions of the lease.

The application for renewal, filed August 9, 1956, was rejected on the grounds that Mr. Koeppel had failed to construct the required improvements and that his reasons for failure to do so were not considered sufficient to justify further renewal.

In his appeal, Mr. Koeppel, who lives in Takoma Park, Maryland, states that he and his wife had planned to travel to California in the Summer of 1956, and to make arrangements at that time for the construction of a building on the tract but the trip was postponed due to the fact that his wife gave birth to a child in June. Mr. Koeppel further states that he now plans to go to California in the Spring of 1957, and requests that an extension of his lease be granted in order that arrangements can be made then for the erection of a building on the tract.

The terms of the lease provide that it is not subject to renewal unless the land has been classified for lease only, or upon a showing satisfactory to the lessor that the failure to apply for the purchase of the tract is justified and that nonrenewal of the lease would work an extreme hardship on the lessee.

There has been no showing by Mr. Koeppel that nonrenewal of the lease would in fact work an extreme hardship upon him. Since the record indicates that no improvements whatever have been constructed upon the tract it would appear that Mr. Koeppel will not suffer material loss or hardship if the lease is not renewed. The only justification given for failure to construct the required improvements upon the tract during the three year term of the lease and thereby qualify to purchase the tract is the birth of the child in June of 1956. No explanation has been given of why the required construction was not begun at some other time during the term of the lease. It is concluded therefore that under the terms of his lease Mr. Koeppel is not entitled to a renewal. The decision of the Manager is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director

G. H. Fur

DISTRIBUTION
Mr. Morton Koeppel (Registered Mail)
Lands Staff Officer
Appeals List No. 1
GCS

no appeal

In reply refer to:
Los Angeles 066013
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Registered Mail
Return Receipt Requested

DECISION February 21, 1957.

Richard E. Griffin	:	Small Tract Lease

Manager's Decision Reversed

Richard E. Griffin has appealed to the Director of the Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated February 16, 1955, rejecting his application for renewal of his small tract lease, Los Angeles 066013, because he had failed to comply with the terms of the lease with respect to the improvements required on the leasehold.

The appellant alleged that it was impossible for him to undertake the construction of improvements on the leased tract because of financial inability due to illness in his family, but that he is now ready and had made arrangements for construction of a permanent home; that the location of his home on this tract was quite important because of his asthmatic condition and the susceptibility of his children to the ailment.

A five-year lease effective April 12, 1950, was issued to the appellant under the Small Tract Act as amended (43 U.S.C., 1952 ed., sec. 682a). The land was classified for lease and sale. Section 3 of the lease provided that the lessee could purchase the land on or after one year from the date of the lease, provided he had made the improvements required by the terms of the lease. Under Section 4, the lessee agreed to construct improvements appropriate for the use for which the lease was issued, which was a cabin site. Section 2 of the lease provided that:

> "The lessee may apply for renewal of the lease, not more than 6 months nor less than 60 days prior to the expiration thereof, and, if it is determined that a new lease should be granted, will be accorded a preference right to a new lease, for such term and upon such conditions as may be fixed."

The Manager's decision of February 16, 1955 was apparently based on the regulations in effect at the time of the decision. Such regulations provided, in substance, that a small tract lease is not subject to renewal unless the lands have been classified for lease only, or upon a showing, satisfactory to the lessor, that the failure to apply for the purchase of the tract is justified, and that non-renewal of the lease would work an extreme hardship on the lessee (43 CFR 257.14) 1/ However, the regulations to be applied in this case are those in effect at the time of the issuance of the lease and incorporated therein. Where the Department has so desired, it has incorporated a clause incorporating future regulations in leases and in other agreements; it did so at the time appellant's lease was issued in the form for renewal of small tract leases, in which the lessee agrees "1. To comply with all existing and future regulations issued under the Act of June 1, 1938....". See Joseph L. Kirg, A-26843, (Dec. 18. 1953). The appellant's lease contained no such requirement; it is subject to the regulation in effect at the time of issuance which provided:

> "Renewal of lease; preference rights. (a) The manager may act upon all applications to renew leases. He may issue such renewal leases for periods not exceeding five years, provided the land then is classified for the purpose specified in the original lease.
>
> "(b) Upon the filing of an application for the renewal of a lease, not more than 6 months or less than 60 days prior to its expiration, the lessee or his duly appointed successor in interest will be awarded a preference right to a new lease, upon such terms and for such duration as may be fixed, if it is determined that a new lease should be granted...." (43 CFR, 1949 ed., 257.11).

Section 2 of the appellant's lease, quoted earlier, was based upon this regulation. The appellant is entitled to a renewal of his lease, under section 2 thereof and the regulation, if (1) he applied for a renewal within the time limits specified, and (2) if it is determined that a new lease should be issued. Gilbert V. Levin, A-27393 (January 30, 1957).

The appellant's application for renewal was timely filed. If a determination is made by the Manager that the land involved should be leased again under the Small Tract Act, then in that event, the appellant has a contractual preference right to a new lease.

1/ This regulation became effective 60 days after Sept. 11, 1950. See Circular 1764 and Part 257, of 43 CFR 1949, ed., for regulations in effect prior to November 10, 1950. The "extreme" hardship" clause is not for application in leases issued prior to the effective date of the new regulations.

Therefore, the decision of the Manager is reversed, and the case remanded for further action consistent with this decision.

For the Director:

A. H.

DISTRIBUTION:

Richard E. Griffin
Lands Staff Officer
Appeals List #1
BF

In reply refer to:

Los Angeles 095203
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 5, 1957.

DECISION

: Registered Mail
Return Receipt Requested

:

Constantino L. Marchione : Small Tract

Decision of Manager Affirmed

Constantino L. Marchione has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated June 3, 1955, rejecting his application to renew his small tract lease of the E$\frac{1}{2}$NE$\frac{1}{4}$SE$\frac{1}{4}$NW$\frac{1}{4}$ sec. 10, T. 2 N., R. 6 E., S.B.M., California, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) for the reason that Mr. Marchione had not placed the required improvements on the land.

The records disclose that lease Los Angeles 095203 was issued to Mr. Marchione for the described tract on May 20, 1952, for a three-year term. The land was classified for lease and sale. It was indicated that the land was to be used for the purpose of a residence and the appellant agreed to construct on the land a "livable cabin". Mr. Marchione applied to renew his lease on May 19, 1955 but since the renewal application showed that he had not constructed any improvements on the land as required by the terms of his lease, the renewal application was rejected by the Manager's decision of June 3, 1955.

In his appeal received July 8, 1955, Mr. Marchione stated that he had not constructed the required improvements on the tract because of circumstances beyond his control; that he and two friends who also had small tract leases on land nearby had planned to assist each other in constructing cabins on the leased tracts, but that he found out about a year ago that they had lost their leases; that he then arranged to have his father help him construct the cabin during the summer of 1954 but his father was killed in an accident, and that he was then unable to proceed alone under the circumstances. He further stated that his renewal application was returned to him for the $10.00 filing fee and from this he assumed his lease would be renewed and had made arrangements to rent a trailer and to go on the land during his vacation but that he had to abandon his plans when his renewal application was rejected. Mr. Marchione stated that in event his appeal was rejected that he desires to have refunded to him the amount expended for a survey and a group road fee as well as the fee submitted with his renewal application and also to apply for a new lease for the same tract.

The applicable departmental regulation (43 CFR, 1955 Supp., 257.15) in effect when Mr. Marchione's lease terminated, relating to renewals of small tract leases of land classified for lease and sale, provides that renewals will be approved only upon a showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee.

In his lease Mr. Marchione agreed to construct on the land improvements appropriate for the use for which the lease was issued. The construction of such improvements was necessary before lessee could meet the requirements for the sale of the tract. By the terms of his lease Mr. Marchione had three years to construct the required improvements, but he failed to develop and carry through any plan to meet his obligations under the lease. It does not appear that any of the reasons offered by the appellant would justify his failure to construct the required improvements during the term of the lease and thus to meet the requirements of sale of the tract. Furthermore, since no improvements of any sort have been placed on the tract, it is not indicated that non-renewal of the lease would work an extreme hardship on the appellant. Cf. *Ernest J. Van Loon*, A-27087 (April 12, 1955). *Evelyn Adams Lyon*, A-27245 (December 28, 1955).

Regarding Mr. Marchione's request that the fee submitted with his renewal application be returned, the applicable regulation, 43 CFR, 1955 Supp., 257.8, provides:

> " * * * A fee of $10.00 is required with each application to purchase, based upon an outstanding lease and with each application for renewal or assignment of an outstanding lease. *All filing fees will be retained by the Government.*" (Emphasis supplied)

In view of this regulation the Bureau is precluded from returning the $10.00 filing fee paid by the appellant. Likewise, there is no authority whereby the Department may reimburse the appellant for the expenditures incurred for surveying the land and for the group road fee.

This decision is without prejudice to the right of Mr. Marchione to again file another application for a small tract lease for the land in accordance with existing regulations and subject to any prior intervening rights which may have arisen.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken it must be received in this Office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.34 inclusive, and other pertinent sections of the Rules of Practice, effective May 1, 1956. See Information Sheet attached.

For the Director:

Attachment

Distribution:

Mr. Constantino L. Marchione (Registered Mail)
Lands Staff Officer
CLS
Appeals List No. 1

In reply refer to:

Sacramento 047510
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 22, 1957.

DECISION

Lynn W. Johnson	:	Small Tracts

Manager's Decision Vacated
Case Remanded

Lynn W. Johnson has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office at Sacramento, California, dated February 8, 1957, offering Mr. Johnson a choice between two 2½ acre tracts for lease under the Small Tract Act of June 1, 1938, as amended 43 U.S.C. 1952 ed., sec. 682a.

It appears that Mr. Johnson had purchased certain land adjoining the area now classified for 2½ acre small tracts, and erected a house on land which he later found to be a part of the public domain. Mr. Johnson then made application for the area in which his house is located under the Small Tract Act. He has submitted an offer of settlement for his use and occupancy of the land, which offer has been accepted.

The two tracts offered to Mr. Johnson in the decision from which this appeal is taken are the SW¼NW¼SW¼NW¼ or the SE¼NW¼SW¼NW¼ of sec. 29, T. 20 N., R. 6 E., M.D.M., California. Mr. Johnson obtained the services of a licensed surveyor who has determined that the house erected by Mr. Johnson lies directly on the line between the SW¼NW¼SW¼NW¼ and the NW¼SW¼SW¼NW¼ of sec. 29 and it is his desire to purchase those two tracts.

As a rule only one tract may be obtained by a person under the Small Tract Act but an exception to this rule is recognized where the circumstances warrant it. (43 CFR 257.4(c)). The Bureau's State Supervisor at Sacramento has stated that Mr. Johnson's desire has merit and has requested that the case be remanded in order that appropriate action can be taken. Accordingly, the Manager's decision is vacated, and the case is remanded to the State Supervisor as requested.

For the Director

a.H. Furr

DISTRIBUTION
Mr. Lynn W. Johnson
Lands Staff Officer
Appeals List No. 1
CCS

In Reply Refer To:

Sacramento 048794
5.04g

UNITED STATES
DEPARTMENT OF THE INTEROR
Bureau of Land Management
Washington 25, D. C.

May 31, 1957

Certified Mail
Return Receipt Requested

DECISION

Peter W. Harker : Small Tract Application

Manager's Decision Affirmed

Peter W. Harker has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated May 4, 1955, rejecting his lease offer under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a), for the reason that he sought the N½NW¼NE¼NW¼ of sec. 14, T. 32 N., R. 5 W., MDM, California, for homesite purposes whereas the tract was classified for lease only for business site purposes and his was not the first application filed for the type of lease for which the land was classified.

In his appeal the appellant questions the correctness of the classification and contends that the tract sought should be properly classified for homesite purposes. He asserts that if the classification is not disturbed, he should have the opportunity to amend his offer to lease the land for the purpose for which it is classified and that, inasmuch as he is a veteran and the first person to file under the Small Tract Act, his rights are paramount to the person who was awarded a lease.

The record shows that on June 14, 1949, Laura Mae Isley filed application (Sacramento 040690) for mineral patent to the Nichols Placer mining claim embracing the N½NE¼NW¼ of sec. 14, which includes the five-acre tract sought by the appellant. Notice of the patent application was published in a newspaper of general circulation in the county in which the land is situated during the period from September 29, 1949 through November 24, 1949. Final certificate of mineral entry was issued on May 8, 1952.

On December 1, 1954, Mrs. Isley filed a withdrawal of her patent application, simultaneously filing therewith her application (Sacramento 049178) for a small tract lease covering five acres of the land formerly included in the mining claim and on which certain improvements had been erected. In view of the withdrawal, the patent application was closed, and the land embraced in Mrs. Isley's lease application was classified for business site purposes by California Small Tract Order No. 446, and a lease was issued to her effective June 1, 1955, for a period of five years.

The Small Tract Act, supra, provides in pertinent part that the Secretary of the Interior, at his discretion, is authorized to sell or lease a tract "not exceeding 5 acres of any vacant, unreserved public lands". The rule is well established that an entry of public land under the laws of the United States segregates it from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until the prior entry is officially canceled and removed. Lula T. Pressey, 60 I.D. 101; Dwight S. Young et al., 61 I.D. 374,377 and cases therein cited. It follows that the appellant's lease offer of September 1, 1954, embracing a tract which was then included in the Nichols Placer mining claim was not vacant, unreserved public land. The tract applied for was not open to lease or sale on September 1, 1954, nor was it proper to hold the application in suspense pending a cancelation of the mineral entry. The application, at the time of its filing was subject to immediate rejection.

Mrs. Isley's lease offer was properly filed upon the relinquishment of the prior mineral entry. The land was subsequently classified for the type of site for which the offer was made, and such lease offer being the first filed prior to notice by the Manager that the tract was under consideration for small tract classification, she was entitled to a preference right under the regulations then in effect[1]; nor will the appellant's status as a veteran or a new filing accord him a priority under the above-cited regulation.

Accordingly, the Manager's decision is affirmed.

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[1] 43 CFR 257.6 provided that "(a) Where an offer to lease a tract is filed prior to the receipt by the manager of notice that the area is under consideration for small tract classification, a preference right to lease will be accorded the offeror only if the land is thereafter classified for the type of site for which the offer was made, * * *. An offer to lease, filed subsequent to the receipt by the manager of notice of contemplated classification and prior to issuance of the order, will not be accorded such preference right * * *".

This Regulation since modified by Circular 1899, is contained in 43 CFR 257.5. No change was made concerning the preference rights of the first application filed prior to notice that the area is under consideration for small tract classification.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR, secs. 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

In the event of appeal, the adverse party to be served with notice thereof is Mrs. Laura Mae Isley, through her attorney, Mr. R. P. Stimmel, 1600 Oregon Street, Redding, California.

For the Director:

G. H. Furr.

Attachment

DISTRIBUTION:

Mr. Peter W. Harker (Certified Mail)
Mr. R. F. Stimmel (Regular Mail)
Mrs. Laura Mae Isley
Lands Staff Officer
Appeals List 1
Files Sacramento 049178 and 040690
BF

18229

appealed to Sec
affirmed A 27517-1-24-58

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 081703
5.04g

June 6, 1957

Registered Mail
Return Receipt Requested

DECISION

Russell L. Coe : Small Tract

Manager's Decision Affirmed

Lt. Commander Russell L. Coe has appealed from the decision of the Manager of the Land Office, Los Angeles, California, dated March 1, 1955, rejecting his application to renew his small tract lease of $E\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}NE\frac{1}{4}$ sec. 32, T. 4 N., R. 3 W., San Bernardino Meridian, California, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended. The renewal application was rejected for the reasons that it was not possible to grant a renewal on the basis of military leave and that Commander Coe had not placed the required improvements on the land.

The records disclose that small tract lease Los Angeles 081703 was issued for the described tract on March 17, 1950 for a 5-year term. The lease provided that the land was to be used for cabin site purposes. The appellant in a letter dated February 9, 1955, requesting the renewal of his lease, stated that his military service removed him from the Los Angeles area and prevented his return; and that he believes the Soldiers' and Sailors' Relief Act would provide ample time for applying for a renewal of the lease. On February 25, 1955, he filed an application for renewal of the lease disclosing that he had the tract surveyed and that no improvements were placed upon the land, together with a statement of military service revealing continuous service since January 8, 1929, with his last enlistment or shipping articles executed on April 3, 1941; that he contemplates active service until January 8, 1959; and that his military assignments may possibly prevent his return to the vicinity of the tract involved until that time.

In his appeal, Lt. Commander Coe advises that he is relying on the Soldiers' and Sailors' Relief Act; that his military orders prevented construction of improvements; that the land was made available to World War II veterans; that being in service at the time of application is not grounds for denial; that upon release from military service he intends to establish residence in the Apple Valley area; that the provisions of the lease were not intended to disfavor persons in his category; that there should be no objection to extending a lease to one who has rendered 26 years of honorable duty; and that his request is not unreasonable and imposes no hardship on the government.

The appellant asserts that he was prevented from constructing improvements on the land by reason of his career in the Navy and that he is relying upon the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1187, 50 U.S.C. App. 561), as amended, to prevent forfeiture because of his failure to construct the improvements under the terms of his lease. Article V of the Soldiers' and Sailors' Civil Relief Act, as amended, sets forth the extent of relief to which a person in military service is entitled in matters relating to public lands:

> "Sec. 561 (1) *No right* to any lands owned or controlled by the United States initiated or acquired under any laws of the United States, including mining and mineral leasing laws, by any person *prior to entering military service* shall during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon or his failure to do any other act required by or under such laws." (Emphasis added).

The Soldiers' and Sailors' Civil Relief Act may not be invoked by the appellant because the making of his offer for a lease and his filing for renewal of the lease both occurred many years subsequent to his entry upon his current period of military service. Its applicability is limited to rights initiated or acquired prior to entry into military service, thus excluding those initiated or acquired subsequent thereto. This distinction is evidenced by other sections of the Act, affording relief only in cases of obligations incurred or rights acquired prior to entry into military service. *Gordon K. MacIntosh*, A-24275 (May 3, 1946). See *Hjalmar A. Jacobson*, *E. B. Todhunter*, 61 I. D. 116. In view of the express provisions of the statute, it is clear that Lt. Commander Coe's appeal lacks merit in requesting the suspension of the lease provisions relative to construction of improvements on the tract involved within the lease period. Without support of the Act, the appellant is in the same position as any other person in like circumstances.

The Act of September 27, 1944, as amended, (59 Stat. 467; 43 U.S.C. 682a, 43 CFR Sec. 181.44) only afforded the appellant as a veteran a preferred right for a period of 90 days for application under the Small Tract Act. It does not grant protection from forfeiture for failure to perform improvements or failure to do any other act required by or under the law.

The record discloses that the appellant did not construct any improvements on the land during the 5-year lease period. He asserts that the itinerant nature of his career is ample justification for and the cause of his failure to construct improvements. This is insufficient excuse for his noncompliance with the requirement of improvements during the 5-year term of the lease. The lease stated that "the lessee may apply for a renewal of the lease * * * and, if it is determined that a new lease should be granted, will be accorded a preference right to a new lease * * *." One of the lease terms is that the lessee agrees "To construct upon the land, to the satisfaction of the Regional Administrator, Bureau of Land Management, improvements appropriate for the use for which the lease is issued."

The preference right to renewal of the lease was not automatic or guaranteed, but was to be determined by a good-faith attempt to comply with the terms of the lease, one of which was to construct "improvements appropriate for the use for which the lease is issued." The mere fact that the appellant was not in the vicinity of the land by reason of his Naval service cannot of itself excuse the obligation imposed by the lease to construct improvements on the leased land during the original term of the lease. Ernest J. Van Loon, A-27087 (April 12, 1955), Minta Harper Dozier, A-27221 (November 11, 1955).

Since the appellant has had 5-years within which to erect improvements on the leased land, and his failure to make such improvements cannot be excused, rejection of his application for renewal was proper and is affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director

Attachment

Distribution:

Lt. Commander Russell L. Coe (Registered Mail)
Land Staff Officer
Appeals List No. 1
WHW

In reply refer to:

Los Angeles 054355
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 19, 1957

Certified Mail
Return Receipt Requested

DECISION

	:	
James B. Trapp	:	Small Tract Lease
	:	

Decision of Manager Affirmed

James B. Trapp has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California dated September 22, 1955 which rejected his application for the renewal of his small tract lease. The application was filed pursuant to the Act of June 1, 1938 (43 U.S.C. 1952 ed., Sec. 682a) and was rejected for the reason that the lessee had failed to construct improvements upon the land in accordance with the terms of the lease.

The appellant stated in his appeal that he was in the Armed Forces for nearly seven years on two different occasions during the time he held the land under lease, which prevented him from making the necessary improvements. He further stated that the reason for his failure to construct the required improvements was explained in previous correspondence. The file contains a letter from the appellant dated August 22, 1955, in which he referred to a letter that he received from the Manager of the Land Office at Los Angeles under date of July 1, 1952, containing the statement "therefore your lease is suspended for a period of your Navy service and six months thereafter," which he construed to mean that there would be added to his lease a period of three years and eight months plus six months after his release from the Navy (apparently the second period of his military service); and that since he was released from the Navy in March 1954, he thought that his lease would not expire until September 1957.

The record discloses that the lease was issued to the appellant for a period of five years effective January 7, 1942. From information contained in the record, it appears that the appellant served three years in the Navy from September 1, 1942 to September 1, 1945. Pursuant to the Soldiers' and Sailors' Civil Relief Act of August 17, 1940 (50 U.S.C., App. 560-572) and regulations thereunder (43 CFR 181.20, 181.34), the appellant's lease, which would have terminated on January 6, 1947, was extended for the period of the appellant's military service and six months thereafter from January 7, 1947 to July 7, 1950. Subsequently, upon application therefor, the lease was renewed for another year from July 8, 1950 to July 7, 1951.

On February 27, 1951, the appellant filed with the Manager a formal notice that he was recalled into active military service on October 20, 1950. By letter of April 19, 1954, the appellant informed the Manager that he was released from the Navy on March 8, 1954. In response to that letter, the Manager replied to the appellant that "the new date of your lease 054355 (due to your time in service) will be September 26, 1954". At the same time the Manager forwarded to the appellant forms for a further renewal of his lease, which were completed and returned by the appellant, and the lease was extended for another year from September 26, 1954.

It appears that the Manager miscalculated the lease termination dated of September 26, 1954, as will be seen later in this decision. The second period of the appellant's military service was from October 20, 1950 to March 8, 1954, or three years, four months and 18 days. This period, plus six months following discharge from the service, amounting to three years, 10 months and 18 days, when added to lease term ending July 7, 1951, operated to extend the lease to May 25, 1955. Adding to this the second one-year renewal granted by the Manager, the lease was extended to May 25, 1956.

It is noted from correspondence in the record that the Manager had advised the appellant that unless he constructed a livable cabin on the land prior to September 26, 1955, no further renewal would be granted and the lease would expire by operation of law. On September 21, 1955, the appellant filed an application for a further renewal which was rejected by the Manager, and from which the present appeal was taken.

Under the terms of the original lease, appellant was required to construct upon the tract a dwelling having a minimum value of $300. The one-year renewal lease dated September 26, 1954, under part 2(a) thereof, specified that the lessee agreed to construct substantial improvements appropriate for the use for which the lease was issued. The departmental regulations applicable in this case provided that a lease for land classified for lease and sale (as was the appellant's lease) is not subject to renewal except upon a showing satisfactory to the Manager, corroborated by the statement of at least one witness, that the lessee's failure to apply for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee. 43 CFR 257.14 (c), Revised 1954.

The Department has consistently held that a small tract lease will not be renewed where improvements have not been constructed thereon during the term of the lease. Ernest J. Van Loon, A-27087 (April 12, 1955). Tracts involved in leases so terminated shall not be subject to further appropriation until so ordered. (43 CFR 257.18, 1956 supp).

It is evident from the record that the Manager erred in his computation of the expiration date of the 1 year lease, issued September 26, 1954 as a result of appellants' military service. However, such error by the Manager in no way militated to the disadvantage of or otherwise restricted the rights of the lessee since he was permitted by renewal to retain the land under lease until September 26, 1955. Neither is there any basis for a further renewal of the lease. Though the appellant served in the military forces for two separate and extended periods, he has held the land under lease almost 14 years. His military service during this period was for approximately seven years. Therefore, his lease has been in effect for at least seven years when not in service. Appellant requested and was granted all of the applicable benefits accruing to veterans under the provisions of the Soldiers' and Sailors' Civil Relief Act pertaining to public lands. Accordingly, the Manager had no alternative but to deny further renewal of the lease.

In the face of the record there is no reason to disturb the decision of the Manager, and it is hereby affirmed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the Rules of Practice, Circular 1950, effective May 1, 1956 as amended by Circular 1962, effective October 4, 1956. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:

James B. Trapp (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

In reply refer to:

Sacramento 044642
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 5, 1957

Certified Mail
Return Receipt Requested

DECISION

Harvey Arnold : Small Tract
:
: Appeal Dismissed

Harvey Arnold, through his attorney, filed a notice of appeal to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Sacramento, California, dated March 12, 1957, which dismissed Mr. Arnold's protest with respect to the issuance of small tract lease, Sacramento 044642 to Mrs. Lorene Lacy.

The process of an appeal is governed by the rules of practice, 43 CFR, Part 221, as amended, to which specific attention was directed in the Manager's decision, dated March 12, 1957. Sec. 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Sec. 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Sec. 221.2 concludes as follows: ". . . The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Sec. 221.3 of the rules of practice is as follows:

> "Statement of reasons: written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in sec. 221.98 . . . ."

Sec. 221.98 provides:

> "Summary dismissal. An appeal to the Director . . . will be subject to summary dismissal by the officer to whom it is made for any of the following causes: (a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; . . . ."

Appellant filed his notice of appeal on April 11, 1957, which did not contain a statement of reasons for the appeal. A statement of reasons should have been filed not later than May 13, 1957, since the 30th day after the notice of appeal was filed, May 11, 1957, fell on a Saturday. No such statement has been received and no request has been made for an extension of time in which to file the statement of reasons as provided for by sec. 221.97 of the rules of practice. The appeal is therefore dismissed.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a $5.00 filing fee. Strict compliance must be made with 43 CFR, 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962 effective October 4, 1956. See Information Sheet.

In the event of an appeal, the adverse party to be served with notice thereof is Mrs. Lorene Lacy, 1823 Sheridan Street, Redding, California.

For the Director

John B. Piccolo

Attachment

DISTRIBUTION:

Messrs. Hoover, Lacy and Bienvenu, Attorneys for Harvey Arnold (Certified Mail)
Harvey Arnold (Regular Mail)
Mrs. Etta Wakefield (Regular Mail)
Mrs. Lorene Lacy (Regular Mail)
Land Staff Officer
Appeals List No. 1
HGPT

In reply refer to:
Los Angeles 0123825
Los Angeles 0108942
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 29, 1957

DECISION

Ileff Basil Keen State of California	:	Small Tract Application State Indemnity Selection

Appeal Dismissed

Ileff Basil Keen has appealed to the Director, Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated January 7, 1955, rejecting his lease offer under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a) for the W½NE¼NW¼NE¼ sec. 4, T. 3 N., R. 3 E., SBM, California. The offer was rejected because the tract applied for was included in State Indemnity Selection, Los Angeles 0108942, and had been classified as more suitable for disposal under the Indemnity Selection than for small tract purposes.

On June 26, 1956, the appellant filed a withdrawal of his appeal. Consequently, the appeal is dismissed. Alvin James, A-27401 (November 13, 1956)

The record of appellant's lease offer (Los Angeles 0123825) is being returned to Land Office Manager for refund of the advance rental paid in connection with the offer.

For the Director

Attachment

DISTRIBUTION:
Ileff Basil Keen (Regular Mail)
State of California, State Lands Division (Regular Mail)
Lands Staff Officer
Appeals List No. 1
Land Office (Los Angeles) with case record Los Angeles 0123825
BF

21592

In reply refer to:

Los Angeles 0119559
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 19, 1957

Certified Mail
Return Receipt Requested

DECISION

Karl J. Placek : Small Tract Application

Manager's Decision Affirmed

Karl J. Placek has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated October 21, 1954, rejecting his application filed pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a), because the tract, on date of filing the lease offer, was not available for leasing.

The records disclose that small tract lease Los Angeles 070649, for the same tract involved in this appeal, was issued to Homer E. Engle on August 26, 1948, for a term of five years. It was due to expire on August 25, 1953. Engle, pursuant to an application therefor, was granted a one-year renewal. By inadvertence the renewal was made effective September 1, 1953; it was not due to expire until August 31, 1954. The appellant filed his application on August 27, 1954. Lawrence S. Meyram, Jr., pursuant to application, filed September 2, 1954, was issued small tract lease Los Angeles 0119723 for the identical tract, for a term of three years commencing October 19, 1954.

The Placek application was rejected by the Land Office Manager for the reason that:

> "An error was made on the records of this office with reference to the issuance date of Renewal under LA 070649. Tract was not open to filing until September 2, 1954 at 9:30 am. Lease has been issued applicant LA 0119723 on October 19, 1954."

The appellant contends that the Engle renewal lease, although it was due to expire on August 31, 1954, was improperly dated and that the renewal should be considered as terminating on August 25, 1954. Otherwise, he contends, the Engle lease would not be in effect from August 26 to September 1, 1953 - and in that case, no lease would be in existence which would be capable of renewal on September 1, 1953. If the Engle lease may be considered as having terminated on August 25, 1954, then his (the applicant's) lease offer is the first properly filed application for the tract after the expiration of the Engle lease.

A "renewal lease" is, for all intents and purposes, a new lease. In the instant case the renewal lease granted Engle was on a different lease form than the original lease. It contained different terms and conditions than the original lease. In fact it was a new contract. The lessee, Engle, had a right to rely on the terms of his new contract. If the terms thereof were not in accordance with the agreement of the parties, then it was subject to reformation by agreement of the parties or by court order; but until reformed, it remained a valid subsisting contract of the United States Government which could not be unilaterally abrogated. Thus it is clear that the Engle lease was a valid subsisting lease on the day the appellant filed his application. It was not due to expire until August 31, 1954.

The Small Tract Act, supra, provides, in pertinent part, that the Secretary of the Interior, in his discretion, is authorized to sell or lease a tract "not exceeding 5 acres of any vacant, unreserved public lands." The rule is well established that an entry of public land under the laws of the United States segregates it from the public domain, appropriates it to private use, and withdraws it from subsequent entry or acquisition until the prior entry is officially cancelled and removed. Lula T. Pressey, 60 I. D. 101; Martin Judge, 49 L. D. 171. It follows that the appellant's lease offer of August 27, 1954, embracing a tract which was then included in an outstanding lease, was not for "vacant, unreserved" public land. The tract sought was not open to filing so long as the Engle lease remained outstanding, had not expired, and was uncancelled. That lease effectively segregated the tradt from further disposition. The appellant's lease offer was properly rejected.

Accordingly, the Manager's decision is affirmed.

Karl J. Placek is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Karl J. Placek, then he must serve a copy of all documents on the adverse party, Lawrence Sanford Meyran, Jr., 8755 West Olympic Boulevard, Los Angeles 35, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

A. H.

Attachment

DISTRIBUTION:

Mr. Karl J. Placek (Certified Mail)
Mr. Lawrence S. Meyran, Jr. (Regular Mail)
Lands Staff Officer
Appeals List No. 1
BF

23464

In reply refer to:

Los Angeles 0130750
0130764
0130765
5.04g
8-21-57

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

Decision

Walter Nielsen :
Albert Nielsen : Small Tract Applications
Edna Maire Cogswell :

Manager's Decision Affirmed as Modified

Walter Nielsen, Albert Nielsen and Edna Maire Cogswell have each appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated April 12, 1955, rejecting their applications (Los Angeles 0130750, 0130764 and 0130765, respectively), under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a), for lands located in the SE¼ sec. 24, T. 4 N., R. 2 E., S.B.M., California. The Manager rejected their applications because the lands applied for were embraced, together with other lands, in school indemnity selection by the State of California (Los Angeles 0106495) under the Act of February 28, 1891 (43 U.S.C., 1952 ed., sec. 851). The lands were classified for school indemnity selection on March 15, 1955. The appellants each filed their applications on March 28, 1955.

Each appellant was informed concerning the requirements of the rules of practice, 43 CFR Part 221, yet each failed to serve a copy of his appeal upon the Division of State Lands, State of California. By reason of the non-compliance with the rules of practice with respect to service of the Notice of Appeal on the adverse party, the appeals must be dismissed. Aside from the procedural defect no facts warranting a change in the decision are found other than as hereinafter set forth and as modified the Manager's decision is affirmed.

The evidence of record now establishes that the classification of the SE¼ sec. 24 as suitable for disposal under the school indemnity selection is erroneous. Based upon an approved field examination report, dated July 28, 1956, the lands sought by the appellants have been classified as mineral in character within the purview of the public land laws.

The record also discloses that the lands are appropriated by unpatented mining claims located under the general mining laws and are not subject to further appropriation.

Therefore, for the reasons stated above, the Manager's decision of April 12, 1955, is affirmed as herein modified.

It is apparent that the appellants' purpose in appealing to this office is to recover the "fees" paid by each of them. It appears that the appellants were approached by a private "locator" who filed their applications for a "fee" of $50.00 each; this included a $25.00 personal service "fee" to himself. The remaining $25.00 included the $10.00 filing fee and $15.00 advance rental, required by the Bureau upon the filing of a small tract application. The filing fee, $10.00, was earned in each case and will be retained by the Government (43 CFR 257.8); the advance rentals will be returned to the respective appellants when this decision becomes final.

The right of appeal to the Secretary of the Interior is allowed. If such appeal is taken, it must be received in this office within 30 days from notice hereof and must be accompanied by a filing fee of $5.00 for each separate application, claim, entry, permit, lease, protest or similar filing or interest on which the appellant is seeking favorable action. Strict compliance must be made with 43 CFR Sections 221.31 to 221.35, inclusive, and other pertinent sections of the rules of practice, Circular 1950, effective May 1, 1956, as amended by Circular 1962 effective October 4, 1956. See Information Sheet attached.

In the event of appeal, the adverse parties to be served with notice thereof are the Division of Public Lands, State of California, 1412 Twelfth Street, Sacramento 14, California, and Samuel O. Duvall, 1206 Toledo, San Clemente, California.

When this decision becomes final the State indemnity selection record will be returned to the Manager, through the Assistant to the Bureau's State Supervisor, Los Angeles, California, for appropriate action consonant with the mineral classification of the lands embraced in the State selections.

Acting Director

Attachment

DISTRIBUTION:
Mr. Walter Nielsen (Certified Mail); Mr. Albert Nielsen (Certified Mail); Miss Edna Maire Cogswell (Certified Mail); Division of State Lands, State of California, Sacramento 14, Calif. (Regular Mail); Mr. Samuel O. Duvall (Regular Mail); Lands Staff Officer; Each case file; Appeals List No. 1; BF

Los Angeles 084441

5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 23, 1957

DECISION

Alfred Joseph Safady : Small Tract

Manager's Decision Reversed
Case Remanded

Alfred Joseph Safady has appealed to the Director, Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated August 5, 1955, rejecting his application for renewal of his small tract lease, Los Angeles 084441, because he had failed to comply with the terms of the lease with respect to the improvements required on the leasehold.

The appellant alleged that it was impossible for him to undertake construction of improvements on the leased tract because of financial inability and due to illness, but that he is now ready and has made arrangements for construction of a permanent home. He further alleges that location of his home on this tract is important to him because of his health.

A five-year lease effective September 27, 1950, was issued to the appellant under the Small Tract Act as amended (43 U.S.C., 1952 ed., sec. 682a). The land was classified for lease and sale. Section 3 of the lease provided that the lessee could purchase the land on or after one year from the date of the lease, provided he had made the improvements required by the terms of the lease. Under Section 4, the lessee agreed to construct improvements appropriate for the use for which the lease was issued, which was a cabin site. Section 2 of the lease provided that:

> "The lessee may apply for renewal of the lease, not more than 6 months nor less than 60 days prior to the expiration thereof, and, if it is determined that a new lease should be granted, will be accorded a preference right to a new lease, for such term and upon such conditions as may be fixed."

The Manager's decision of August 5, 1955 was apparently based on the regulations in effect at the time of the decision. Such regulations provided, in substance, that a small tract lease is not subject to renewal unless the lands have been classified for lease only, or upon a showing, satisfactory to the lessor, that the failure to apply for the purchase of the tract is justified, and that non-renewal of the lease would work an extreme hardship on the lessee (43 CFR 257.14) 1/ However, the regulations to be applied in this case are those in effect at the time of the issuance of the lease and incorporated therein. The appellant's lease contained provisions in accordance with the regulations in effect at the time of issuance, which in pertinent part provided:

> "Renewal of lease; preference rights. (a) The manager may act upon all applications to renew leases. He may issue such renewal leases for periods not exceeding five years, provided the land then is classified for the purpose specified in the original lease.
>
> "(b) Upon the filing of an application for the renewal of a lease, not more than 6 months or less than 60 days prior to its expiration, the lessee or his duly appointed successor in interest will be awarded a preference right to a new lease, upon such terms and for such duration as may be fixed, if it is determined that a new lease should be granted...." (43 CFR, 1949 ed., 257.11).

Section 2 of the appellant's lease, quoted earlier, was based upon this regulation. The appellant is entitled to a renewal of his lease, under section 2 thereof and the regulation, if (1) he applied for a renewal within the time limits specified, and (2) if it is determined that a new lease should be issued. Gilbert V. Levin, 64 I.D. 1; (May 7, 1957). Henry Offe, 64 I.D. 52; Ralph Louis Walker, A-27425.

The appellant's application for renewal by letter was timely filed on July 28, 1955. If a determination is made by the Manager that the land involved should be leased again under the Small Tract Act, then in that event, the appellant has a contractual preference right to a new Lease.

1/ This regulation became effective 60 days after Sept. 11, 1950. See Circular 1764 and Part 257, of 43 CFR 1949, ed., for regulations in effect prior to November 10, 1950. The "extreme hardship" clause is not for application in leases issued prior to the effective date of the new regulations.

Therefore, the decision of the Manager is reversed, and the case remanded through the Bureau's Assistant to the State Supervisor, at Los Angeles, California, for further action consistent with this decision.

For the Director:

A. H.

DISTRIBUTION:
Alfred Joseph Safady (Regular Mail)
Lands Staff Officer
Appeals List No. 1
BF

21592

Dismissed A-27600 8/26/58

In reply refer to:

Los Angeles 0114342, etc. 1/
0108914, etc. 2/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 30, 1957

Certified Mail
Return Receipt Requested

DECISION

Mary Elizabeth Ainsworth, et al., 1/ :
John Cornelius O'Keefe, et al., 2/ :

Small Tract Applications

Decision of the Manager Affirmed
Hearing Denied

Mary Elizabeth Ainsworth and 102 other individuals 1/ have appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Los Angeles, California, dated April 30, 1956, which rejected their small tract applications for lands located in secs. 35 and 36, T. 25 S., R. 33 E.; and secs. 1 and 2, T. 26 S., R. 33 E., M.D.M., California. John Cornelius O'Keefe and Nina Mae McCullough also have appealed from a decision of the Manager dated April 30, 1956, which rejected their small tract applications for tracts located in sec. 28, T. 26 S., R. 35 E., M.D.M., California. 2/

The applications were filed pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a).

Appendix A: 103 appeals involving lands in Townships 25 and 26 South, Range 33 East.

The applications were rejected for the reasons that the lands are being managed by the California Department of Fish and Game for upland game hunting and because parts of the lands are topographically unsuited for small tract purposes.

1/ Appendix A.
2/ Appendix B.

Rufus Bailey, attorney, acting on behalf of 39 appellants 3/, whose appeals involve applications for tracts in sec. 36, T. 25 S., R. 33 E., contends:

(1) Section 36 is made up of low, gently rising land ideally located within one to two miles from Lake Isabella, an artificial lake created in 1954 by the United States Army Engineers which impounds approximately 570,000 acre feet of water. Topographically the land affords the most suitable sites for cabins in the vicinity of Lake Isabella and is as good or better than section 21 which was opened for small tracts in May, 1956, as well as sites occupied by many commercial housing and land developments around the lake. Four new communities have grown up on or near the Lake on lands less suitable than section 36, and the land is easily accessible.

(2) The Lake Isabella area, including section 36, is becoming a major California recreation area and is chiefly valuable for residential, recreational, business and community sites.

(3) The need for section 36 by the California Department of Fish and Game was based upon conditions which existed in 1947 and prior to the creation of Lake Isabella. The land is within two miles of the Lake and quail guzzlers are never placed near large bodies of water, and since the creation of Lake Isabella the State Department of Fish and Game has maintained only a nominal number of guzzlers.

Appellant alleges further that due to the recreational developments at Lake Isabella that hunting with firearms in section 36, if not now prohibited, will be prohibited in the near future. He contends that section 36 and adjacent sections are under grazing lease and hunting has never been, or is not now, encouraged in the area. He argues further that the lands have a market value of $40 per acre for small tract purposes or $25,600.00 per section, whereas the government realizes only a nominal amount from grazing, and it therefore follows that it is in the interest of the government to allow the small tract applications.

Mr. Bailey requested that the cases be assigned to a field commissioner for hearing.

William A. Feinberg, attorney, has appealed on behalf of Irving Kaplan, Sidney Herman Moss, Clifford Wesley Stiess, and Frank Berger. Alexander Valdez Partida has appealed on behalf of himself. Arguments advanced in these appeals are similar to those of Rufus Bailey, above, except appellants apparently feel they have been discriminated against since they filed their applications in April, 1954, and due to the pending appeals have not been able to file for other public lands.

3/ The appeal is on behalf of a total of 54 appellants, 15 of which will be made the subject of a separate decision.

Harry Allan Guthrie and three other applicants for tracts located on the SE¼SE¼ sec. 35, T. 25 S., R. 33 E., allege in pertinent part that (1) there is public access to the land through sections 2 and 3, T. 26 S., R. 33 E.; (2) they have contacted the State Game and Fish Department who have advised by letter and personal statements that quail do not range more than one mile from water whereas the lands sought are located more than a mile from the Lake and that cabins so located would have no effect on quail and other game, (3) the land has little value for recreation purposes and has outgrown its value for grazing and for the propagation of quail due to the demand for cabin sites in the area and that the discharge of firearms would endanger persons on the Lake or residing near the Lake, (4) the land is valuable for cabin site purposes because of its location to the town of Kernville and Lake Isabella and local realtors are selling similar lands for $1,000.00 per lot, and (5) there are extensive areas open to hunting and suitable for the grazing of livestock in the vicinity.

Mr. Guthrie argues further that the Manager's decision is confusing for the reasons that:

> "The books in your office indicate that a Mr. Brown has a seeming interest in section 35 with a request for withdrawal in his favor as to access to grazing. There is also a statement on file in your office that parts of sec. 35 are suitable for small tract developments."

Appellants also submitted a number of snapshots which they state were taken of the tracts sought and which show roads and other features of the land.

As to sections 1 and 2, T. 26 S., R. 33 E., applicants have submitted 56 identical appeals wherein they contend in pertinent part:

> "***, that the portion applied for by the appellant is suitable topographically for disposal under the Small Tract Act, and that the highest and best use is for the use as a small tract rather than for upland game holding and/or cattle grazing."

Some of the appellants apparently feel that the Manager erred in accepting applications only to reject them at a later date for classification reasons. They feel that this has operated to their disadvantage since they have been unable to file for other lands.

George Carroll Gillette and five others have filed a request for a hearing wherein they argue in pertinent part that (1) the area is becoming thickly settled, is ideal resort land, and no longer "primitive," and (2) in view of the intense interest in the land for small tract purposes, a more careful analysis and more thorough on-site examination should be carried out and that evidence so obtained by the Bureau and the applicants should be submitted and examined at a public hearing.

Appendix B: Two appeals involving lands in sec. 28, T. 26 S., R. 35 E.

The applications were rejected due to the Short Canyon Well Range Improvements placed upon the land to service the area, and because the land is being managed by the California Department of Fish and Game.

Appellants contend that (1) the land should not have been opened to application if filings would not be allowed, (2) the Short Canyon Well Improvements are of no concern to them, and (3) the land supports no game as it is barren.

Norman F. Sprague, grazing permittee, through his attorney, has filed an answer to the appeal of Rufus Bailey wherein he argues that (1) most of the lands are too steep for cabin sites, (2) there are no feasible means of access to the lands, (3) the quail guzzlers are still needed and that the location of Lake Isabella to the land is not important since the quail have always had access to the Kern River, and that the guzzlers are needed for successful breeding purposes, (4) small tract development of the land would disrupt established cattle operations as this would create irregular property boundaries and necessitate extensive fencing, and (5) appellants have grossly misrepresented the revenue lost to the government by rejection of the applications since the applications affect only 270 acres rather than 640 acres.

A number of protests against the classification of the land for small tract purposes have been filed with the Bureau. The Kern River Fish and Game Association states that (1) the area is within easy driving distance of Los Angeles and that thousands of hunters and fishermen visit the area; that it is one of the few areas in California stocked with game that are accessible and not posted; that only by retention in public ownership can the lands be utilized to the benefit of the greatest number of people; and that due to the growing population of the State of California foresight is needed to meet recreational demands, and (2) the Kern River Fish and Game Association has been working in cooperation with the State toward the improvement of the land for upland birds. This they allege can only be done on public land since the State cannot spend money for improvements on private lands.

The Kern River Chamber of Commerce filed a letter with the Land Office Manager in protest against the allowance of small tract applications on the subject lands and argue that (1) the entire economy of Kern Valley is dependent upon sportsmen and tourists and further encroachment upon the public domain will restrict public use and adversely affect the local economy, and (2) experience indicates that unsightly improvements constructed on small tracts detract from the value of the area.

Two others, a group identified as the "Fish and Game Protective Association" of Bakersfield, California, and the "Kern River Valley Development" also protest allowance of small tract development on the subject land. Arguments advanced by protestants are similar in content to those outlined above.

The lands were examined in conjunction with other lands in the vicinity of Lake Isabella in 1954 and 1956. Lake Isabella is located about 50 miles northeast from Bakersfield, California. The field reports show that the lands are situated one-half to two and one-half miles north from the project property line of the reservoir. The reports indicate that the construction of Lake Isabella and commercial and other developments at Kernville have stimulated an intensive use of the area for fishing, camping, hunting, and other out-of-door recreational pursuits as well as cabin and summer home sites. In view of the demand for cabin sites, all of the land considered suitable for that purpose and not required for retention in public ownership for public purposes was classified for disposal under the Small Tract Act.

The field reports with accompanying photographs and topographical maps of the U. S. Geological Survey show the topographical features of the land to be as follows:

T. 25 S., R. 33 E., sec. 35, SE¼SE¼ nearly level
sec. 36, S½SW¼ nearly level to gently rolling
S½SE¼, NE¼NE¼, rolling to very rough
NE¼SE¼, SE¼NE¼, very rough
T. 26 S., R. 33 E., sec. 1, N½NW¼, W½NE¼,
NW¼SE¼, S½SE¼, rolling
E½NE¼, NE¼SE¼, rolling to very rough
sec. 2, N½N½, SW¼NE¼,
SW¼SW¼SW¼, nearly level to rolling
SE¼NE¼, S½NW¼,
S½ less SW¼SW¼SW¼, very rough to plateau top.

The field reports state that a county road as relocated will extend through sections 1 and 2, T. 26 S., R. 33 E., and will provide public access to the land. However, due to the topographical features of it as evidenced by maps and other information in the record, the construction of access roads from the county road to certain parts of the land, namely, the E½E½ sec. 36, T. 25 S., R. 33 E.; the major part of the E½E½ sec. 1, the S½, S½N½ sec. 2, T. 26 S., R. 33 E., would be an expensive undertaking.

The land is located within the boundaries of Mojave Grazing District No. 1. It is managed for the grazing of domestic livestock and for the propagation of wildlife in accordance with a memorandum of understanding and agreement entered into between the Bureau of Land Management and the California Department of Fish and Game dated June 25, 1947.

The lands in sections 35, and 36, T. 25 S., R. 33 E., are under grazing allotment and the field reports state that cancellation of the allotment would seriously affect the livestock operations of the allottee.

Range improvements of the Grazing District located on section 28, T. 26 S., R. 35 E., consist of a well and windmill, storage water tank, and cattle troughs. These are the Short Canyon Well range improvements and were placed at this location to provide livestock and wild game watering facilities to service the surrounding land area.

The State 4/ pursuant to the memorandum of understanding and agreement has installed four quail watering devices, "gallinaceous guzzlers," at a cost of $900 apiece or a total of $3,600.00. The Short Canyon Well is used jointly by the grazing allottee and the State in connection with their upland bird propagation program. The State has

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4/ The California Department of Fish and Game.

also stocked the land with Chucker quail at a cost of $5 per bird. The number of birds originally planted is not known; however, a total population of 4,000 birds has been established. An unaccounted for amount of funds in the form of wages paid, equipment and administrative costs have also gone into the State's game management. None of the above expenditures includes the investment by this Bureau on the Short Canyon Well improvements.

The California State Department of Fish and Game advised this Bureau on July 26, 1954, and again on August 21, 1956, that the land is needed for upland game habitat. A supplemental classification report of February 1, 1957, of this Bureau states that hunting as a form of recreation has always been popular in the area; and since the creation of Lake Isabella, the construction of better roads, the subdivision of private lands in the vicinity and the settlement of small tracts of public lands, along with the increasing influx of sportsmen to the area, a game management program has become even more important than it has been in the past.

The Act of June 1, 1938 (43 U.S.C., 1952 ed., 682a) as amended, authorizes the Secretary of the Interior in his discretion to classify lands within a grazing district for small tract purposes. 43 CFR 257.1 1957 Supp. Regulations under the act, supra /43 CFR 257.2(a) 1957 Supp./ provide that lands will not be leased or sold which will lead to private ownership or control of scenic attractions, water resources, or other areas that should be kept open for use by the general public. Section 9 of the Act of June 28, 1934, as amended (43 U.S.C., 1952 ed., 315h) states:

> "The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperating with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts. ****."

It is the policy of the Department concerning lands considered to be primarily valuable for multiple purposes, including development under a recreation and public purposes act lease, special land-use permit, or inter-agency agreement, to classify the land for retention in public ownership in order to provide for such uses.

In the matter of the small tract applications of George T. Aldridge, et al., A-26805, decided February 8, 1954, the Department held that the small tract applications were properly rejected and the land classified as primarily valuable for recreational site purposes wherein the land would be developed for use as a public recreational site.

It is apparent that the Bureau of Land Management has ample authority to enter into an agreement with the State for the joint management of the public land such as it has done in this instance. It appears from the record that parts of the land are well located to roads and are topographically suitable for small tract purposes but it would not be proper to classify the land for disposal to a relatively few small tract applicants, who comprise but a very small segment of the public, in order to serve their individual recreational needs. The record discloses that the land is now improved and managed in cooperation with the State and serves the needs of the local townspeople, livestock operators, and provides a recreational outlet for a large segment of the public.

The arguments of the appellants that the land sought is more suitable for small tracts than the purposes for which it is now used and managed are not persuasive evidence of error in the classification of the land in the face of the record which shows that it is being managed by this Bureau in cooperation with other public agencies and that considerable amounts of time and money have been devoted to the development of the land to provide for its utilization and enjoyment by the public in general.

A number of the appellants indicate that they consider a hearing should be held in order to more thoroughly examine evidence concerning the proper classification of the land. A hearing is not conducted as a matter of course to determine the proper classification of land sought but is held only if there is reasonable likelihood that it would develop facts which would be decisive of the questions at issue. Cf. Margaret A. Andrews, Charles B. Gonsales, A-27328 (February 4, 1957). Appellants have had the opportunity to put into the record any evidence which they desired. We believe that the evidence now in the record is sufficient to decide the issues. The request for a hearing is therefore denied.

Certain of the appellants contend that small tract filings should not have been accepted by the Manager only to be rejected on classification grounds that the lands are not suitable for small tract purposes. The applications were filed for land that had not been classified. Therefore, the Manager could not properly advise the applicants whether or not the land would be classified as suitable for disposal under the Small Tract Act until the classification order had been issued.

Appellants' allegations of opinions and undocumented statements concerning the suitability of the land are not sufficiently persuasive evidence to controvert the findings and conclusions of the Manager which are based upon detailed investigation of the matter by qualified field personnel of this Bureau. Where the classification of the land is adverse to the applicant, the burden is upon him should he appeal the classification to show in what respect the adverse classification is in error. In the absence of error, which appears on the face of the records, appellants must show by positive and substantial evidence that the adverse classification is erroneous. Mary Refugio Jackson, et al., A-27236, etc. (February 29, 1956); Harry E. Anderson, A-27313 (June 14, 1956).

After careful review and consideration of all of the evidence presented for the record, we can find no reason for modifying or otherwise changing the Manager's decisions. Therefore, the decisions of the Manager of April 30, 1956, were correct and are hereby affirmed.

The right of appeal to the Secretary of the Interior is allowed. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by appellants of this decision, and must be accompanied by a $5.00 filing fee for each separate small tract on which appellants are seeking favorable action. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken, then appellant(s) must serve a copy of all documents on the adverse parties, i.e., Department of Fish and Game, State of California, 722 Capitol Avenue, Sacramento, California; E. LeRoy Folles, Jr. (Attorney), Law Offices of Musick, Peeler and Garrett, 621 South Hope Street, Los Angeles 17, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Each Appellant (Certified Mail)
Mr. Rufus Bailey, Attorney at Law (Certified Mail)
Mr. William A. Feinberg, Attorney at Law (Certified Mail)
Mr. E. LeRoy Folles, Jr., Attorney at Law (Certified Mail)
State Department of Fish and Game Association (Certified Mail)

--Continued on page 10---

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Hon. William F. Knowland, United States Senator
Hon. Edgar W. Hiestand, Member of Congress
Hon. Patrick J. Hillings, Member of Congress
Hon. Glenard P. Lipscomb, Member of Congress
Hon. Joe Holt, Member of Congress
Lands Staff Officer (1)
Appeals List No. 1
CFG

APPENDIX "A"

Name	Serial No.	Legal Description T. 25 S., R. 33 E., M.D.M.	
Mary Elizabeth Ainsworth	0114342	S½NW¼NE¼NE¼	Sec. 36
Paul Ratekin McGinnis	0114343	N½NW¼NE¼NE¼	"
Kingdon Raymond Beeth	0114798	S½SW¼SW¼SW¼	"
Norman Theodore George	0114881	S½NW¼SW¼SW¼	"
Arthur Pershine Sutton	0114882	S½NE¼SW¼SW¼	"
G. L. Nichols	0114883	N½SW¼SW¼SW¼	"
Albert Kenneth Greene	0114886	N½NE¼SW¼SW¼	"
Sidney Herman Moss	0114891	N½NW¼SE¼SW¼	"
Albert Marion Andrews	0114899	N½SW¼NE¼NE¼	"
John Anton Paulick	0114900	N½SE¼SW¼SW¼	"
George Joseph Giebel	0114952	N½NE¼SE¼SW¼	"
Edward McGivern, III	0114953	N½SE¼SE¼SW¼	"
Ardy John Babajian	0114954	S½NE¼SE¼SW¼	"
Ynacio Acosta	0114959	N½NW¼SW¼SW¼	"
Augusta Mae Walsh	0114972	S½SE¼SE¼SW¼	"
George Spiro Prancevic	0114980	S½SW¼SE¼SW¼	"
Frank Edwin Breiding	0115009	S½NW¼SE¼SW¼	"
Robert George Hochenedel	0115011	N½SW¼CE¼SW¼	"
Ingolf Paul Schjeldahl	0115113	N½SW¼SE¼NE¼	"
Tony Joseph Bressickello	0115114	S½SW¼SE¼NE¼	"
Maria R. Fernandez	0115115	N½SE¼SE¼SE¼	"
George (NMI) Riethmiller	0115176	S½NW¼SW¼SE¼	"
Lois Lain Gordon	0115177	N½SW¼SW¼SE¼	"
Lucy Vessio Xanthos	0115204	S½NE¼SE¼SE¼	"
Robert Gene Miner	0115213	S½NW¼NE¼SE¼	"
Samuel Mitchell Weeks	0115218	S½NW¼SE¼NE¼	"
Clifford Wesley Stiess	0115224	S½SE¼NE¼NE¼	"
Frank Berger	0115225	N½SE¼NE¼NE¼	"
Irving Kaplan	0115226	S½NE¼NE¼NE¼	"
Robert James Leckey	0115227	S½NE¼NE¼SE¼	"
Frank (NMI) Genco	0115228	N½NE¼NE¼SE¼	"
Robert Richard Bell	0115251	N½NE¼SE¼SE¼	"
Wade (NMI) Jones	0115255	N½SE¼NE¼SE¼	"
Mary Mieko Mera	0115260	N½NE¼SE¼NE¼	"
Setsusyo (NMI) Asari	0115261	N½SW¼NE¼SE¼	"
Zita D. Machinski	0115358	S½SE¼NE¼SE¼	"
Sidney Myron Sandberg	0116091	N½SE¼SW¼SE¼	"
James Herz Joseph	0117677	S½SE¼SW¼SW¼	"
George Frederick Waterman	0117678	S½SW¼NE¼SE¼	"
Alexander Valdez Partida	0117712	N½SW¼SE¼SE¼	"
Harry Allan Guthrie	0117422	S½NW¼SE¼SE¼	Sec. 35
Leland LeRoy Westphall	0117426	N½NE¼SE¼SE¼	"

APPENDIX "A"----Cont'd.

Name	Serial No.	Legal Description T. 25 S., R. 33 E., M.D.M.	
Barbara Lee Crawford	0117530	N½SE¼SE¼SE¼	Sec. 35
Clyde Donald Martin	0117531	N½SW¼SE¼SE¼	"
		T. 26 S., R. 33 E., Sections 1, 2 and 3, M.D.M.	
William Philip Kitchen	0115493	S½NW¼ofLot 4-	Sec. 1
Pitman Fields Williams	0115573	N½SW¼NE¼NW¼ -	"
Cecil Challice Wilson, Jr.	0115575	S½SW¼NE¼NW¼ -	"
John Ronald Arvig	0115576	S½NE¼NE¼NW¼	"
LeRoy Erwin Cassou	0115577	N½SE¼NE¼NW¼	"
Robert Irwin Minkow	0115627	S½SW¼SW¼NE¼	"
George Robert Feuchter	0115693	S½SE¼NW¼NE¼	"
Edward Charles Mensak	0115757	S½NW¼SW¼NE¼	"
William Albert Zube	0115779	N½NE¼SW¼NE¼	"
Herschel Allen Phillips	0115796	S½NE¼SE¼NE¼	"
Jose Antonio Guzman	0115797	S½NW¼SW¼SE¼	"
George Freemont McCormick	0115803	S½NW¼SE¼NE¼	"
John Thomas Valent	0115853	N½SE¼SW¼SE¼	"
Emily Mae Musil	0115861	S½NW¼SE¼SE¼	"
Roderick Arnold Larson	0115865	S½NW¼NE¼SE¼	"
Walter John Brandt	0115968	S½NE¼NW¼SE¼	"
Shirley Reid Switzer	0115869	N½SE¼SW¼NE¼	"
Clifford Myrton Harris	0115870	N½SW¼SE¼NE¼	"
Glenn Platt Ketchum	0116034	N½SE¼SE¼NE¼	"
Alfred George Finn	0116137	S½SW¼NW¼NE¼	"
James Charles Hateley	0117423	S½SE¼SE¼SE¼	"
Richard Thomas Tidball	0122908	S½NE¼NE¼SE¼	"
Dorothy Doe Prince	0116891	W½SW¼NE¼NW¼	Sec. 2
Glenn Willard Stubbs	0116930	E½NW¼NW¼NW¼	"
Seerley Gnagy Knupp	0116984	W½SW¼NW¼NE¼	"
George Carroll Gillette	0116985	W½NW¼NW¼NE¼	"
Carl Bradley Sartwell, Jr.	0116988	E½NW¼NE¼NE¼	"
George Kermit Hovey	0116989	W½NW¼NE¼NE¼	"
Wallace Junior Landen	0116999	W½NE¼NW¼NE¼	"
Edward McLean Scott	0117013	W½NE¼NE¼NE¼	"
Lois Corinne Johnson	0117017	W½SW¼NW¼NE¼	"
William (NMI) Berk	0117049	E½SW¼SW¼SW¼	"
H arry James Whitbord	0117050	E½NE¼SE¼NW¼	"
Merle Graham Kehn	0117061	E½NW¼SE¼NE¼	"
Allen (NMI) Feinberg	0117067	W½NE¼SE¼NW¼	"
Waldo Lynn Laning	0117069	W½SE¼NW¼NE¼	"
Wayne Harford Williamson	0117070	E½SE¼NW¼NE¼	"
Allie Dirden Rainey	0117131	E½SW¼SE¼NE¼	"
Marilyn Smallwood Qualls	0117132	W½SW¼SE¼NE¼	"
Timothy Eugene Smallwood	0117133	W½SE¼SW¼NE¼	"
Harold (NMI) Smallwood	0117134	E½SE¼SW¼NE¼	"
Margaret H elen Schneider	0117136	W½SW¼SW¼NE¼	"
Robert Francis McDermott	0117137	E½SW¼SW¼NE¼	"
Harry (NMI) Strainge	0117152	E½SE¼SE¼NW¼	"

APPENDIX "A" ----Cont'd.

Name	Serial No.	Legal Description T. 26 S., R. 33 E.	
Samuel Bunder Gornbein	0117168	E½SE¼SE¼SE¼	- Sec. 2
J. Medley Lawbaugh	0117195	E½SE¼NW¼SW¼	- "
A. LaVielle Lawbaugh	0117196	W½SW¼NE¼SW¼	"
Ralph J. Schmidt	0117197	E½NW¼SE¼SW¼	"
Fred A. Schmidt	0117198	W½NW¼SE¼SW¼	"
Howard F. Schmidt	0117199	E½NE¼SW¼SW¼	"
Frank Regis Nicholson	0117220	E½NW¼NW¼SE¼	"
Benjamin Rudolph Hano	0117222	E½SW¼NW¼SE¼	"
John Allan McLachlan	0117223	W½SE¼NW¼SE¼	"
Sam Jacob Chestnut, Jr.	0117229	E½SE¼SW¼SE¼	"
Donald Perry Burkholder	0117246	W½SW¼SW¼SE¼	"
Ralph Junior Phillips	0117253	W½NE¼NE¼SW¼	"
Victor Einar Hansen	0117254	W½NE¼SE¼SW¼	"
John Arthur Allison	0117260	E½NE¼NW¼SW¼	"
Floyd Malcolm Hebard	0117333	E½NW¼SW¼SE¼	"

APPENDIX "B"

Name	Serial No.	Legal Description
		T. 26 S., R. 35 E., M.D.M.
John Cornelius O'Keefe	0108914	N½NE¼NE¼SW¼ - Sec. 28
Nina Mae McCullough	0114604	S½SW¼SE¼SE¼ - "

In reply refer to:

Los Angeles 097090
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 3, 1957

DECISION

Samuel Magid : Small Tract

Manager's Decision Affirmed

Samuel Magid has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated August 16, 1955, rejecting his application for renewal of his small tract lease because he had failed to comply with the terms of the lease with respect to the improvements required on the leasehold.

The appellant was issued a lease under the provisions of the Small Tract Act of June 1, 1938, as amended (43 U.S.C., sec. 682a). The lease, effective August 28, 1952, was for a 3-year term. On August 15, 1955, he applied for a renewal of the lease. In his renewal application he stated that all the terms and conditions of the lease and regulations had been complied with except "that we traveled and did not have time enough but will surely build this year." In his appeal he stated that due to starting a new business, he did not in the past, have the time to start construction, but that he was now ready and able to build on the leased tract if a renewal were granted.

Under the lease terms and regulations in effect when the appellant's lease issued, it was required that an application for renewal be filed not more than 6 months, nor less than 60 days, prior to the expiration of the lease and that it be shown that the lessee has constructed satisfactory improvements on the tract or that the lessee's failure to apply for sale of the tract is justified under the circumstances. If those regulations are binding in this case, then the renewal application would be rejected because it was not timely filed within the period specified by the regulations and lease terms. However, where a change in regulations would relieve a lessee of obligations, or extend him a benefit and would not be detrimental to the interests of the United States, that benefit may be extended to the lessee. Henry Offe, 64 I. D. 52.

The renewal application, filed only 13 days prior to the termination of the lease, may not be considered under the lease terms and the regulations in effect when the lease was granted. However, it may be considered under the regulations in effect at the time of filing. Those regulations conferred a benefit upon the lessee, viz., the lessee might request a renewal at any time prior to the expiration of the lease. The regulations (Circular 1899, effective March 11, 1955) 43 CFR, Part 257, in pertinent part provide that -

> "Where the land has been classified for lease and sale, renewals will be approved only upon a satisfactory showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee." (43 CFR 257.15(c)).

Therefore, if the appellant's failure to meet the requirements for sale was justified under the circumstances of his case, or it is shown that nonrenewal of the lease would work an extreme hardship on him, he would then be entitled to a renewal of his lease.

The appellant has failed to comply with the terms of his lease wherein he agreed "to construct upon the land,***substantial improvements appropriate for the use for which the lease is issued." He has failed to show in what way a nonrenewal of the lease would work an extreme hardship on him. In such case, he is not entitled to a renewal. Henry Offe, supra; Evelyn Adams Lyon, A-27245 (December 28, 1955).

Accordingly, the Manager's decision is affirmed.

Samuel Magid is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

A. H. Tuer

Attachment

DISTRIBUTION:

Mr. Samuel Magid (Certified Mail)
Lands Staff Officer
Appeals List No. 1
BF

24844

In reply refer to:

Los Angeles 0150946
Los Angeles 0150947
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 10, 1957

Certified Mail
Return Receipt Requested

DECISION

Meyer Wise :
Fela Wise : Small Tract

Manager's Decision Reversed

Case Remanded

Meyer Wise and Fela Wise have appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Bureau Office at Los Angeles, California. This decision, dated July 10, 1957, rejected the high bids of the appellants for Small Tracts offered at public auction, on the grounds that the appellants were not citizens of the United States and therefore were not eligible to obtain patents under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. sec. 682a.

The appellants contend the decision of the Manager to be in error by reason of the fact that both appellants are holders of Permanent Resident Permits issued to them at a Port of Entry to the United States. They further state that while at the port of entry they requested appropriate forms for making declaration of intention to become citizens of the United States, and were told by the authorities there that such declarations were no longer necessary.

With regard to naturalization procedure, Section 334f of the Act of June 27, 1952 (66 Stat., 163, 254) provides - Any alien over 18 years of age, residing in the United States pursuant to lawful admission for permanent residence, may, upon application prescribed file in duplicate in the office of the clerk of court a signed intention to become a citizen of the United States. The section further provides that the filing of such a declaration shall not be construed as a condition precedent to filing a petition for citizenship.

The Bureau of Immigration and Naturalization has indicated that it is still the practice to issue certificates of having filed such declarations of intention to become citizens, where such certificate is required for employment or other purposes. The connotation attaching to what is properly termed a Permanent Resident Visa is that the permittee is a lawful entrant to the United States.

The Small Tract Act of June 1, 1938 as amended, 43 U.S.C. 682c., authorizes the Secretary of the Interior to sell or lease small tracts to those who are citizens of the United States, or who have filed their declaration of intention to become citizens, as required by naturalization laws.

Departmental regulations, 43 CFR 1956 Supp., 257.14 (e) provide in pertinent portion, "If the high bidder (at a public auction under the Act) meets the general requirements of a small tract applicant he will be declared purchaser".

These general requirements are defined in part in 43 CFR, 1956 Supp., 257.4 (a) (1) which provides "An application may be made by any of the following: An individual who is a citizen of the United States or who has filed declaration of intention to become a citizen."

While it is apparently true that a declaration of intention to become a citizen is no longer requisite to naturalization, this does not mean that such a declaration of intention is not necessary as a prerequisite to being declared a purchaser under the Small Tract Act, supra.

The language of the Small Tract Act, supra, is clear in that it requires an individual to be a citizen of the United States or one who has filed declaration of intention to become a citizen. It is clear that the language of sec. 334f of the Act of June 27, 1952, supra, is permissive and not a prohibition against such filing.

The Permanent Resident Visas issued to the appellants are not sufficient to comply with the requirements of the Small Tract Act as to citizenship. Therefore before they may be declared purchasers of tracts for which they were high bidders, it will be necessary for them to submit to the Land Office at Los Angeles a certificate from the clerk of court certifying that they have filed their declarations of intention to become citizens of the United States.

In view of the foregoing it appears that the action was premature in rejecting the high bids of the appellants before allowing them time to present evidence which would have satisfied the citizenship requirements of the Small Tract Act, supra.

Accordingly, the decision of the Manager is reversed and the case remanded to the Land Office at Los Angeles with instructions to issue a decision requiring the appellants to present within a reasonable time a certificate that they have filed their declarations of intention to become citizens of the United States. It further appears from the record that the appellants may have already been refunded the amounts of their high bids, in which case the Managers decision must include a requirement that the moneys so refunded be redeposited in the Land Office within the same time limit as extended for fulfillment of the previous requirement. Upon the receipt of satisfactory evidence of compliance with the requirements noted above, within the time allowed, the Manager is directed to declare the appellants purchasers of the tracts for which they have submitted the high bids, if all then be regular.

Meyer Wise and Fela Wise are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each case for which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Meyer Wise (Certified Mail)
Fela Wise (Certified Mail)
Lands Staff Officer
Appeals List
JLR

In reply refer to:

Los Angeles 0120006
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 16, 1957

Certified Mail
Return Receipt Requested

DECISION

Ellen Elizabeth Parks	:	Small Tract

Manager's Decision Affirmed

Ellen Elizabeth Parks has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated September 7, 1955, rejecting her offer to lease (Los Angeles 0120006) filed October 29, 1954, under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a). The offer was rejected because the Bureau "has granted a two-year extension (renewal) to the present lessee of this tract, 089777 (Harold Klein). (This lease will not expire until 1956)."

The appellant contends that Klein was not entitled to a renewal of his lease and that since she had filed her application after the primary term of the Klein lease had expired a lease of the tract should be issued to her.

The record shows that Klein was issued a small tract lease on September 13, 1951. Sixty days prior to the expiration thereof, July 16, 1954, Klein filed application for the renewal thereof. It was timely filed within the provisions of the lease terms and the regulations (43 CFR 257.14). Although the renewal application was at first rejected, this office, by decision of August 25, 1955, found, in effect, that Klein's failure to meet the requirements for sale was justified and that a nonrenewal of his lease would work an undue hardship. We held that Klein was entitled to a renewal. A two-year renewal was granted for the term ending September 12, 1956. The record further shows that Klein has complied with the terms of his lease, has constructed upon the land substantial improvements appropriate for the use for which his lease issued, has made application for and is entitled to purchase the tract.

Under the governing regulations Klein's renewal application was entitled to first consideration. Applications to lease the same tract filed after the expiration of his lease and before the renewal application was acted upon were properly held in suspense. But upon determination that Klein was entitled to a renewal and upon issuance of a renewal lease to him, any other applications for that tract were properly rejected. Cf. John E. Miles, 62 I. D. 135, 141 (1955); Minta Harper Dozier, A-27221 (November 17, 1955). Thus, it was mandatory that the Manager reject the appellant's application and his decision is, therefore, affirmed.

Mrs. Parks is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:

Mrs. Ellen Elizabeth Parks (Certified Mail)
Lands Staff Officer
Appeals List No. 1
BF

24844

In reply refer to:

Los Angeles 061508
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 23, 1957

DECISION

Florence C. Bolt : Small tract lease renewal

Manager's Decision Reversed;
Renewal Lease Authorized

Florence C. Bolt has appealed to this office from the decision dated August 23, 1955 of the Manager, Land Office, Los Angeles, California, rejecting her application for a second renewal of her small tract lease of the N½NE¼SW¼NW¼ sec. 12, T. 4 N., R. 3 W., S.B.M., California,1/ for the reasons that no further improvements had been placed on the tract since the first renewal was granted and the showing in explanation of the failure in this regard was considered insufficient to justify further renewal of the lease.

The record shows the lease was issued originally on November 7, 1949, for a five-year term, for cabin site purposes, the tract having been classified for lease and sale, carrying an appraised valuation of $100. The lessee agreed under section 4(b) of the lease to construct "improvements appropriate for the use for which the lease is issued," and in section 2 thereof it was provided that the lessee "may apply for a renewal of the lease * * * and, if it is determined that a new lease should be granted, will be accorded a preference right to a new lease, for such term and upon such conditions as may be fixed." Timely application for renewal lease having been submitted by the lessee, and the record showing the lessee planned to construct a house on the land, 16 feet x 24 feet in size, a concrete slab foundation for which had already been placed on the lands at an approximate cost of $273, the Manager issued a renewal lease of the tract for one year. It is noted the Manager specified the effective date of the renewal lease as October 25, 1954. This was erroneous; since the five-year term of the original lease expired November 6, 1954, the one-year renewal of the lease extended from November 7, 1954, through

---

1/ Issued under the provisions of the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C., 1952 ed., sec. 682a).

November 6, 1955. It was provided in the renewal lease that a further renewal thereof might be allowed "upon a showing satisfactory to the lessor that the failure to apply for purchase of the tract is justified and that nonrenewal of the lease would work an extreme hardship on the lessee;" that such renewal lease application should be submitted not more than six months nor less than 60 days prior to the expiration of the lease, and if it is determined that a new lease should be granted, the lessee "will be accorded a preference right to a new lease, for such term and upon such conditions as may be fixed."

With her application for second renewal of the lease, tendered on August 22, 1955, Mrs. Bolt submitted a photograph of the tract depicting the concrete slab foundation constructed thereon during the original lease term. She also submitted a letter explaining her inability to complete the improvements on the tract to entitle her to purchase it was due principally to limited finances and her needs in meeting unusual medical expenses occasioned by the serious illness of her mother for the preceding six years, her expenses in her mother's funeral in October 1954 and her expenses in connection with two other funerals in her family in the past eight years. She explained also that she cared for her mother in her last illness personally and was therefore unable to work and earn any money. However, she now proposes to sell her home to obtain the necessary funds to complete the construction on the small tract which will entitle her to purchase it, and she asks that she be granted the renewal lease to enable her to accomplish this purpose. Mrs. Bolt's statements were uncorroborated but she invited verification be made by inquiry of the local chief of police.

In her appeal filed September 26, 1955, Mrs. Bolt reiterates the financial strain which she has been under in the past several years, and she urges reconsideration of her application for lease renewal. By letter dated October 15, 1956, she has indicated she is now in a position to complete the improvements on the tract if she is granted the renewal lease which she seeks.

From the lease terms and the provisions of the applicable regulations 2/ (43 CFR, 1956 Supp., 257.15) in effect when the appellant's renewal lease terminated, it appears that the lessee may be granted a renewal of the lease if it is determined that a new lease should be issued for the tract, provided her failure to meet the requirements for sale of the tract was justified in the circumstances and that nonrenewal of the lease would work an extreme hardship upon her.

2/ The regulation in issue has remained unchanged since its effective date, March 9, 1955. Circular 1899, 20 F.R. 366, January 15, 1955.

The showing of the appellant as to limited finances and unusual medical expenses is not considered a sufficient predicate, within the intent of the lease terms and the provisions of the applicable regulations, as cited above, upon which to conclude that her failure to meet the requirements for sale of the tract was justified and that nonrenewal of the lease would work an extreme hardship upon her. However, the record shows that the first renewal of the lease, though applied for September 1, 1954 (two months prior to the expiration date of the original lease term) was not issued until July 1955, and consequently that there remained of the one-year lease term for which the renewal was granted, only four months. It would appear, therefore, that the lessee did not actually have a full opportunity to comply with the terms of the lease. For this reason the lessee may be offered a second renewal lease to extend to November 7, 1958, to afford her ample time to complete construction of the needed improvements on the land and thereby to qualify to purchase the tract. The renewal lease will be offered, however, upon condition that the land will be reappraised and the rental and purchase price will be established on the basis of such reappraisal by this Bureau and in accordance with governing regulations for leases under the Small Tract Act. 43 CFR Part 257, Circular 1899 (20 F.R. 366), Circular 1911 (20 F.R. 4648), and Circular 1935 (20 F.R. 7256), copies attached.

Therefore, the decision of the Manager is reversed, and the case is remanded to the Land Office, Los Angeles, California, for renewal of the lease to November 7, 1958, as specified above, upon agreement of the lessee to accept the renewal lease subject to the reappraisals mentioned and upon her payment of the rental to be stipulated in the renewal lease in accordance with such reappraisal, for the period commencing November 7, 1955 and ending November 6, 1958.

Edward Woozley
Director

Attachments 3

DISTRIBUTION:

Mrs. Florence C. Bolt (Regular Mail)
LO(Los Angeles) with Case File L.A. 061508
Lands Staff Officer
Appeals List No. 1
FAP

24844

In reply refer to:

Los Angeles 089143
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 4, 1957

Certified Mail
Return Receipt Requested

DECISION

Louis Mark Mannatt : Small Tract Application

Manager's Decision Affirmed

Mr. Louis Mark Mannatt has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated January 22, 1954, rejecting Mr. Mannatt's small tract application on the ground that the land was withdrawn from all kinds of entry by Executive Order No. 5117 of May 16, 1929, for the protection of the water supply of the City of Los Angeles, California.

The appellant does not question the validity of the Manager's decision, but merely asserts that the house he owns on the land has been lived in off and on since 1925, and continuously for the past six years; and that he can see no possible harm this could cause or has caused the City of Los Angeles.

The land in issue was also withdrawn by the act of March 4, 1931 (46 Stat. 1530, 1536) from settlement, location, filing, entry, or disposal under the laws of the United States for the protection of the watershed supplying water to the City of Los Angeles. The records show that the lands are still withdrawn for that purpose.

The Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) permits the lease or sale only of vacant, unreserved, public lands or of lands reserved or withdrawn by the Secretary of the Interior. The lands in question were reserved by act of Congress at the time of the filing of the application, and were not available for disposition under the Small Tract Act. Ernest E. Wissman, A-25750 (January 20, 1950). The lands have not been restored to entry, and are therefore not subject to appropriation under the Small Tract Act, supra.

When an application is filed on withdrawn lands the application must be rejected at the time of filing. In the case of W. C. Dalzell, A-26346 (March 28, 1952), the Department held that an application for withdrawn lands may not be held undetermined pending restoration of the land to entry, but must be rejected. Therefore, as the lands in question were still withdrawn from settlement, location, filing, entry, or disposal under the public land laws by an Executive order and by an act of Congress, the small tract application was properly rejected. The occupancy of the land during the existence of the withdrawal must be deemed a trespass and does not give rise to any rights. Maynard M. Stutzman, A-25844 (May 17, 1950).

In view of the above, the Manager's decision is affirmed.

Mr. Louis M. Mannatt is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

John B. Piccolo

Attachment

DISTRIBUTION:

Mr. Louis Mark Mannatt (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 094170

5.04g

November 4, 1957

DECISION

Joseph J. Di Vita	:	Small Tract

Manager's Decision Affirmed

Joseph J. Di Vita has appealed to the Director, Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated April 11, 1956 rejecting his application for the second renewal of his small tract lease, by reason that no other additional improvements had been placed upon the tract during the period of the first renewal.

Appellant relates that in fact no additional improvements were placed upon the tract during the period of the first renewal. He does not present any sound reason for his failure to proceed with the improvements nor does he advance any statement as to the time in which he will be able to finish any contemplated improvements. In fact the appellant states that he has been trying to sell his tract, and that he cannot locate the tract even after it was pointed out to him at a previous inspection by a land locator.

The original lease was issued on April 15, 1952 for a three year term and contemplated the erection of a cabin on the land during that period. On April 15, 1955 it was renewed for one year upon a showing that a slab had been poured upon the tract. At the expiration of this period the appellant had applied for another renewal stating as such grounds the existence of the slab.

At no place in the case record is there any indication that the appellant intended to pursue the erection of improvements to any further degree than is now present upon the tract. In fact he states that he wished to sell the tract but was told by a land locator that he would have to pour a slab upon it before he could sell it, and since that time it "had been on sale".

It appears that the appellant has not shown that his failure to meet the requirements for the sale of the tract is justified or that non-renewal of his lease would result in an extreme hardship to him, see 43 CFR, 1956 Supp. 257.15(c). Cf Evelyn Adams Lyon, A-27245, December 28, 1955, Ernest J. Van Loon, A-27087, (April 12, 1955).

Accordingly, the decision of the Manager is affirmed.

Joseph J. Di Vita is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

John B. Piccolo

Attachments

Distribution:
- Joseph J. Di Vita (Certified Mail)
- Lands Staff Officer
- Appeals List
- JLRankin

In reply refer to:

Los Angeles 0107621
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 19, 1957

DECISION

Beulah McGill
Appellant

Small Tract

Manager's Decision Reversed

Mrs. Beulah McGill has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Los Angeles, California, dated March 12, 1957, rejecting her application for renewal of her small tract lease Los Angeles 0107621,

Appellant's lease was issued for a period of 3 years on March 10, 1954, and provided that she was entitled to purchase the land on or after 1 year from the date of the lease provided that she had made the required improvements on the land and complied with the terms and conditions of the lease. By section 2(a) of the lease appellant agreed to construct upon the land "substantial improvements appropriate for the use for which the lease is issued," which was a residence.

On February 27, 1957, appellant filed her application to renew her lease, stating that because of illness during the past year she had been unable to carry on the building project for her lease. The Manager rejected the renewal application on the ground that appellant had not given sufficient reason to justify her failure to comply with the terms of the lease with respect to improvements.

Appellant has explained to the satisfaction of this office her reason for not erecting the improvements required for her lease. By her own statements on appeal and that of her doctor, she was seriously ill and was advised by her doctor to discontinue her employment until she recovered, which prevented her acquiring the necessary funds to build. She was unable to engage in gainful employment during the years 1954, 1955, and 1956. She states that she has now recovered from her illness, is again working and will be able to construct improvements on her tract. She states that she needs this tract to make a home for herself and her two small children. There appears to be justification for granting her requested renewal. Cf. Joseph L. King, A-26843 (December 18, 1953).

The renewal application was timely under the regulations 43 CFR, 1956 Supp., 257.15, now in effect and it is concluded that her application for renewal of her small tract lease should be acted upon favorably. Henry Offe, 64 I. D. 52 (1957). In view of the period of time which has elapsed between the time of the filing of the application for renewal and this decision, it is deemed appropriate that appellant be granted a renewal lease for a period of at least a full year from the date of execution thereof. The renewal lease shall set forth a sales price which shall be based upon a current appraisal of the land. Cf. 43 CFR, 1956 Supp., 257.15(a).

The Manager's decision is reversed and the case remanded to the Land Office at Los Angeles for appropriate action consistent with this decision.

For the Director:

John B. Piccolo

DISTRIBUTION:

Mrs. Beulah McGill (Regular Mail)
LO(Los Angeles) with case file L.A. 010762l
Lands Staff Officer
Appeals List No. 1
CCS

26514

In reply refer to:

Los Angeles 0100304
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 25, 1957

DECISION

:

Helen E. Shortridge : Small Tract

:

Decision of Manager Reversed

On March 20, 1953, a small tract lease, Los Angeles 0100304, was issued for certain land in California, to Ward E. Duvall under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec.682a), for a period of three years. The lease therefore expired on March 19, 1956. On March 6, 1956, the Manager of the Los Angeles Land Office approved an assignment of the tract from Mr. Duvall to Helen E. Shortridge.

An application for purchase was received in the land office on March 26, 1956 and was rejected on April 5, 1956 for the reason that it was untimely filed. Mrs. Shortridge has appealed from this decision to the Director, Bureau of Land Management.

It is indicated by the record that at the time of the assignment there was a 16' x 25' concrete slab on the tract. Less than a month later when the purchase offer was received by the Manager, a frame cottage of an estimated value of $1280 had been constructed on the land. Appellant contends that her interest in the small tract is genuine as evidenced by the improvements on the land, and further states that delay in mail sent from her agent in Banning, California to her residence in Aberdeen, South Dakota was the principal cause of the untimely filing of the application.

The present departmental regulation, 43 CFR, 1956 Supp. 257.13, governing applications to purchase under small tract leases carrying an option to purchase is not mandatory, but only directory as to the time when an application to purchase is to be filed. It has been held that a lessee may file his application to purchase within a reasonable time after the lease term has expired, absent intervening rights. Albert H. Dobry, George H. Borovay, 64 I.D. 116, 122 (1957).

In the circumstances I find that a six day delay in the filing of the appellant's application to purchase is not an unreasonable delay in time.

The Manager's decision is reversed and the case remanded for further action looking to the processing of the application to purchase in accordance with views expressed in this decision.

For the Director:
John B. Piccolo

DISTRIBUTION

Helen E. Shortridge (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

reply refer to:

Los Angeles 0127227
0127879
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 26, 1957

Certified Mail
Return Receipt Requested

DECISION

Donald C. Darling :
Paul M. Bolda :

Small Tract Applications

Cases Remanded

Donald C. Darling and Paul M. Bolda have appealed to the Director, Bureau of Land Management, from a decision of the Land Office Manager, Los Angeles, California, dated January 11, 1956, which rejected their small tract applications, Los Angeles 0127227 and 0127879 respectively, filed pursuant to the act of June 1, 1938 (43 U.S.C., 1952 ed., Supp. IV, 682a) as amended. The applications were rejected because the land was found to be too rough, broken and mountainous in topography for small tract purposes.

The applicants appealed on February 15, 1956, alleging that the tracts sought are, in their opinion, suitable for small tract purposes based upon a topographic survey of the land and a map which they assumed to be reasonably correct. However, the record shows further that on June 25, 1956, the appellants filed new applications for other lands.[1] The subsequent applications were apparently accepted by the Land Office Manager as amendments to the original applications, since they were assigned the same land office serial numbers as the original filings.

---

[1] The applications as originally filed in February, 1955, cover the following-described 5-acre tracts:

Los Angeles 0127227 - E$\frac{1}{2}$SE$\frac{1}{4}$NE$\frac{1}{4}$NW$\frac{1}{4}$ sec. 1, T. 3 N., R. 4 E.
" 0127879 - W$\frac{1}{2}$NE$\frac{1}{4}$SE$\frac{1}{4}$NW$\frac{1}{4}$ sec. 1, T. 3 N., R. 4 E.

Applications filed by the same applicants on June 25, 1956, cover the following-described tracts:

Los Angeles 0127227 - E$\frac{1}{2}$SW$\frac{1}{4}$SW$\frac{1}{4}$NW$\frac{1}{4}$ sec. 1, T. 3 N., R. 4 E.
" 0127879 - W$\frac{1}{2}$SW$\frac{1}{4}$SW$\frac{1}{4}$NW$\frac{1}{4}$ sec. 1, T. 3 N., R. 4 E.

In view of the foregoing circumstances there is no need to decide the issues on appeal since the original applications have since been amended to exclude the land involved in the appeal and to include entirely different land. Marcellus Palmer, A-27193 (August 2, 1955). The approved report of field examination dated February 11, 1957, states that the land covered by the amended applications is suitable for small tract purposes. Accordingly, it appears that the applications may now be allowed if all else be regular and in the absence of intervening rights.

The cases are remanded for further consideration of the amended applications by the Land Office Manager.

For the Director:
John B. Piccolo

DISTRIBUTION:

LO(Los Angeles), with case records Los Angeles 0127227 and 0127879
Mr. Donald C. Darling (Regular Mail)
Mr. Paul M. Bolda (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

In reply refer to:

Los Angeles 0127232
0127233
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 4, 1957

Certified Mail
Return Receipt Requested

DECISION

Cleta P. McDonald :
Lora G. Montgomery : Small Tract Applications

Decision of Manager Affirmed

Cleta P. McDonald, small tract applicant, Los Angeles 0127232, and Lora G. Montgomery, small tract applicant, Los Angeles 0127233, have appealed to the Director, Bureau of Land Management, from a decision of the Manager, Los Angeles, California, dated January 11, 1956, which rejected their small tract applications filed pursuant to the Act of June 1, 1938, 43 U.S.C., 1952 ed., Supp. IV, sec. 682a, as amended. They were rejected because the land is too rough, mountainous and broken in topography to be suitable for disposal under the Small Tract Act, supra.

The appellants allege that they filed their applications upon the good advice of attorneys and land locators of desert properties and that they will not relinquish their rights to the land. The record shows that the land was examined in March 1956. The field report states that the land is too rough and inaccessible to be suitable for small tract purposes. The U. S. Geological Survey topographical map covering the "Old Woman Springs Quadrangle" prepared in 1955 shows the tracts sought lie along and extend to either side of a sharp draw or wash. This map indicates that the draw or wash rises sharply from the valley floor and extends up to a point near the summit of a ridge 300 to 400 feet above the valley floor and that the land sought lies on a slope of 40 to 50 percent and that the land slopes in two or more directions from each of the tracts sought.

The Department has held that a small tract application for a tract of steep, rocky land is properly rejected. Harry Carson, et al., A-27289 (May 28, 1956); Cf. Della Lee Halloran, A-27433 (May 31, 1957).

Appellants do not point out any errors in the classification, but simply allege that they filed for the land on the advice of attorneys and land locators. The appellants have not submitted any persuasive evidence of error in the classification of the land as unsuitable for small tract purposes. Accordingly, there appears to be no basis for changing the classification. Della Lee Halloran, supra.

After careful consideration of the records, it is concluded that the decision of the Manager was correct and it is hereby affirmed.

Cleta P. McDonald and Lora G. Montgomery are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each application on appeal. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:

Miss Cleta P. McDonald (Certified Mail)
Miss Lora G. Montgomery (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CFG

In reply refer to:

Los Angeles 0138259, et al.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 5, 1957

DECISION

Richard S. Shaffer, et al. : Small Tract

Decisions of Manager Reversed
Cases Remanded

On February 6, 1956, under the provisions of the Small Tract Act of June 1, 1938 (52 Stat. 609, as amended, 43 U.S.C., sec. 682a), the appellants made application for lands in sec. 17, T. 5 N., R. 2 W., S.B.M., California. The applications were as follows:

	Los Angeles
Richard S. Shaffer	0138259
Wert R. Cope	0138263
William H. Coffee, Jr.	0138264
Clifford M. Stewart	0138270
Curtis A. Veazey	0138272
Milo D. Appleman	0138274
Carl J. Eduard	0138275
Lawrence E. Robb	0138277
Edward W. Busse	0138278
Marion Gertrude Lawrence	0138279
Dallas B. Southwick	0138280

On February 9, 1956, the Manager of the Land Office at Los Angeles rejected these applications for the reason that this land was found to be too rough and mountainous to be considered as suitable for small tract purposes. The appellants have timely appealed the decisions of the Manager and assert that they have traversed the land and find it desirable for small tract development. In addition to verbal descriptions and penned maps, some photographs are offered by appellants as evidence of suitability.

The Department has held that where there is ample evidence to show the lands applied for are not too rough and mountainous for small tract purposes, the tracts may be properly classified for small tract development. Charles E. Wolle, et al., A-27292 (May 28, 1956). The

Wolle decision is especially relevant to this decision because *Wolle, et al.*, applied for tracts in the same section as the present appellants and had their applications rejected for the same reason.

It appears in this instance, as in the *Wolle* case, that rejection was based on a field examination dated October 24, 1947, which encompassed all the township. The report simply states that along with other lands in section 17, the tracts applied for by Wolle, *et al.*, and those requested by appellants, are "* * * too mountainous or rocky for settlement under the small tract program. * * *"

Analogous to the facts of the *Wolle* case, the appellants have submitted photographs and maps of the desired lands, made statements that they are able to identify the land, and that the tracts include substantial areas of reasonably level land suitable for the construction of facilities usually associated with small tract occupancy. Appellants further assert that cabins are being constructed in the immediate area and there are no problems of access.

We note that as of April 15, 1957, patent had been issued to thirty-one small tract lessees in section 17. It is noted that the lands to the west and contiguous to the tracts in dispute have been classified for small tract purposes under California Small Tract Classification Order 192, dated December 9, 1949.

It appears from a topographic map of section 17 that much of the area is mountainous. Apparently in making the classification the field examiner considered as suitable for small tract purposes only those tracts, all or the greater part of which, were level or gently sloping. However, the legal subdivision lines do not fully coincide with the land contour. A study of the maps indicates that the lands involved in this appeal may be equally as desirable as the lands described in the *Wolle* case. There is adequate evidence in the record to indicate that the subject tracts may have sufficient area of nonmountainous terrain so that the land is suitable for small tract classification.

Therefore, the decisions of the Manager are reversed. The cases are remanded for an examination of the land in each application and for appropriate action looking to the proper classification of the land and appropriate action on each application.

For the Director:

A. H.

DISTRIBUTION:

Mr. Richard S. Shafer (Regular Mail)
Mr. Wert R. Cope (Regular Mail)
Mr. William H. Coffee, Jr. (Regular Mail)
Mr. Clifford M. Stewart (Regular Mail)
Mr. Curtis A. Veazey (Regular Mail)
Mr. Milo D. Appleman (Regular Mail)
Mr. Carl J. Eduard (Regular Mail)
Mr. Lawrence E. Robb (Regular Mail)
Mr. Edward W. Busse (Regular Mail)
Miss Marion Gertrude Lawrence (Regular Mail)
Mr. Dallas B. Southwick (Regular Mail)
Appeals List No. 1
EVJ

Appeal to Sec.
Dismissed A-27633 7-16-58

reply refer to:

Los Angeles 0135075, et al.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 9, 1957

Certified Mail
Return Receipt Requested

DECISION

John Gibbs, et al. : Small Tract Applications

Manager's Decision Reversed
Cases Remanded

John Gibbs and other small tract applicants, shown as Appendix "A", have appealed to the Director of the Bureau of Land Management from decisions of the Manager of the Land Office, Los Angeles, California, dated November 16, 1955, rejecting their small tract applications filed under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) as amended, and the regulations thereunder (43 CFR, 1954 ed., Part 257). The applications were rejected by the Manager because "this land is not subject to application under any act pending approval of the Colorado River-Great Basin Field Committee report as to the disposition of the land involved."

Most of the appellants allege that the rejection of their respective applications by the Manager is contrary to the regulations set forth in 43 CFR 257.1, and request that the applications be suspended until a final determination is made as to their disposition by the Colorado River-Great Basin Field Committee. One of the appellants states that the Committee report has been released to the public and it does not preclude entry on the lands under the Small Tract Act, supra.

The records show that the lands described in the respective applications have been withdrawn as a first form withdrawal under the statutory powers of the Secretary of the Interior pursuant to section 3 of the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), for use of the Bureau of Reclamation in connection with the Colorado River Storage Project.

The Small Tract Act, supra, authorizes the Secretary of the Interior, in his discretion, to sell or lease a tract not exceeding five acres of any vacant unreserved public lands withdrawn by Executive Orders No. 6910 of November 26, 1934 and No. 6964 of February 5, 1935, or public lands withdrawn or reserved by the Secretary of the Interior for any purposes, which the Secretary may classify as chiefly valuable for residence, recreation, business, or community sites. (Act of June 8, 1954, 68 Stat. 239; 43 U.S.C. 682a; 43 CFR 257.1).

The small tract applications shown as Appendix "A" should have been retained in the land office until a classification of the lands had been made and not rejected for the reason stated by the Manager since it was not a proper basis for rejection.

In view of the findings and recommendations of the Colorado River-Great Basin Committee, the Department of the Interior is now engaged in working out a land-use program for all reclamation withdrawn lands below Davis Dam. Proper procedure, therefore, would require the Manager to suspend action on the applications until the land-use program study has been completed.

Accordingly, the decisions of the Manager rejecting the small tract applications are reversed. The cases will be remanded to the Bureau's Assistant to the State Supervisor at Los Angeles and will be suspended until the land-use program study has been completed, when this decision becomes final.

Each party listed in Appendix "A" is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each application for which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

Attachment

DISTRIBUTION:

Each Appellant (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

APPENDIX "A"

Serial Number Los Angeles	Name	Address
0135075	John Gibbs	5757 Franklin Ave., Hollywood 28, California
0135213	Joseph Phillips	5257 Blakeslee Ave., N. Hollywood, California
0135658	Mildred P. Ashleigh	820 Foothill Blvd., Duarte, California
0135838	James Veitch	7811 Bellaire Ave., N. Hollywood, * California
0136410	Robert F. McElroy	5253 Hollywood Blvd., Hollywood, California
0136565	Evelyn M. Schenstrom	7339 Clybourn Ave., Sun Valley, California
0136580	Emmett L. Brinker	10094 Telfair Ave., Pacoima, California

* A copy of the decision will also be sent to 2420 Clark Lane, Redondo Beach, California.

In reply refer to:

Los Angeles 077597
5.04g

December 10, 1957

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

DECISION

Milton Dale Munkeby : Small Tract

Decision of Manager Reversed

Milton Dale Munkeby, the appellant herein, applied for five acres of land described as $W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$, sec. 9, T. 4 N., R. 13 W., S. B. Mer., California, under the provisions of the Small Tract Act of June 1, 1938, as amended (43 U.S.C., sec. 682a). In a decision of March 19, 1956, the Manager, Land Office, Los Angeles, rejected the appellant's application, Los Angeles 077597, for the reason "this land has been found to be too rough and mountainous for Small Tract development." An appeal to the Director, Bureau of Land Management, has been taken from that decision.

The appellant agrees in his appeal that this " * * * general area is definately (sic) too rough and mountainous for Small Tract development* * * ", but further states the tract applied for is an " * * * isolated tract which is not rough and mountainous but a very desireable (sic) tract." Appellant submitted as rebutting evidence a topographical map describing the disputed land. The map was prepared by the United States Geological Survey and is of the Ravenna Quadrangle of Los Angeles County, the land being surveyed in 1930 and the culture revised in 1940 by Los Angeles County.

The rejection of the application by the Manager appears to be based on a field report of an examination dated July 19, 1955, dealing with the $W\frac{1}{2}NW\frac{1}{4}$ sec. 9. When the examination was made, which included the land applied for by appellant, the examiner found the area of 80 acres to be too rough and mountainous for small tract development and the areas which are relatively flat were occupied by a deep ravine or situated high atop the mountain ridge. It was stated there is no public entrance to the land and access would be on a private road. The examiner reported that there are no small tract cabins in the near vicinity, although lands in adjoining section 8 have been classified for small tract purposes. He stated that in an interview with a person who held a small tract lease in section 8 it was indicated that failure to construct improvements was due to the inaccessibility of the land because lessees must pass through private land. The small tract lessee who reported to the field examiner that access could not be obtained to the tracts in section 8 has now, however, obtained patent to his tract.

It appears from the topographic map that much of the land in section 9 is rough and mountainous. However, the land desired by appellant does not have this characteristic. It is situated in the valley floor and is reasonably level and suitable for small tract development. Lands in sections 8 and 14 classified as suitable for small tract purposes appear to be far more rough and mountainous than the tract requested by appellant. The Department has held that examination of such evidence as topographic maps may be sufficient to controvert the finding that land is too mountainous and rocky for small tract purposes. Cf. *Charles E. Wolle, et al.*, A-27292 (May 28, 1956).

Less than four months after the decision of the Manager rejecting the application of Mr. Munkeby and about one year after the date of the classification report, patent No. 1161523, dated July 12, 1956, under application Los Angeles 063777 and made pursuant to the Small Tract Act, was issued to the lessee for lands described as $E\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$, sec. 8, T. 4 N., R. 13 W., S. B. Mer., California. A 33-foot right of way was reserved on each boundary. This patented land is contiguous to the tract applied for by appellant.

In view of the foregoing, it appears that the land applied for may be suitable for small tract development. Therefore, the decision of the Manager is reversed and the case is remanded for further action looking to proper classification of the tract.

Because the field examination report indicates an access problem may exist, it should be emphasized that if the land is found suitable for small tract purposes, the issuance of a lease would be in no way a guarantee of access to the tract.

For the Director:

John B. Piccolo

DISTRIBUTION:
LO(Los Angeles) w/Case File
LA 077597
Mr. Milton Dale Munkeby (Regular Mail)
Lands Staff Officer
Appeals List No. 1; EVJ

In reply refer to:
Los Angeles 098592
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 12, 1957

Certified Mail
Return Receipt Requested

DECISION

Augusta M. Buccowich : Small Tracts

Manager's Decision Affirmed

Augusta M. Buccowich has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Land Office, Los Angeles, California, dated December 7, 1955, rejecting her application to renew her small tract lease for certain land in California, issued under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C., 1952 ed., sec. 628a). The application for renewal was rejected because the lessee had not placed the required improvements on the land during the term of the small tract lease.

The records disclose that small tract lease Los Angeles 098592 for a five-acre tract was issued to Augusta M. Buccowich on December 19, 1952, for a three-year term. The land had been classified for lease and sale. It was indicated in the lease that the tract was to be used for recreational purposes and the lessee agreed to construct on the land a two room cabin.

In the appeal Mrs. Buccowich alleges, among other things, that her husband became sick shortly after the lease was issued; that his health repidly grew worse and there was no possibility of doing improvement work before the lease ran out; that Mr. Buccowich passed away on November 20, 1955; that her two sons were called into the military service; and that now she is ready to construct the required improvements on the tract if the renewal is granted. She further alleges that it would be an extreme hardship for her if the lease could not be renewed because she needs and can make much use of the tract as a recreation site.

On December 7, 1955, eleven days before the lease was due to expire, the appellant filed with the Manager of the Land Office an application for renewal of the lease. In the space on the standard form of application (Form 4-775a) which called for a description of the improvements constructed on the land, Mrs. Buccowich stated "Husband ill and now deceased - Attached are papers showing length of illness of my husband and death certificate." The doctor's certificate shows Mr. Buccowich's sickness as nephritis and that he was under the doctor's care for three months. The doctor further stated that Mr. Buccowich would be inactive for several months.

The Department has held that an application for renewal of a small tract lease which has been classified for lease and sale may be approved where the application is filed before the expiration of the lease term and a showing is made that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee. Henry Offe, 64 I.D. 52 (1957).

In the instant case, however, it does not appear that nonrenewal would work an extreme hardship on the appellant. She is not foreclosed from applying for or otherwise obtaining another small tract. Moreover, I do not believe that "an extreme hardship" would result from the nonrenewal of the lease, particularly since the appellant has apparently not expended any money or effort looking to the erection of suitable improvements. Cf. George M. McKissick, A-26678 (July 3, 1953). The decision of the Manager is affirmed.

Augusta M. Buccowich is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal.. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp, Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:
John B. Piccolo

DISTRIBUTION
Mrs. Augusta M. Buccowich (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

27786

In reply refer to:

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Los Angeles 0138276
0141027
5.04g

December 20, 1957

DECISION

Clifford Z. Ritter :
Delbert Nebeker : Small Tract

Decisions of the Manager Reversed

Pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a), on February 6, 1956, Clifford Z. Ritter made application, Los Angeles 0138276, for a small tract described as W½NE¼SE¼SW¼, sec. 17, T. 5 N., R. 2 W., S. B. Mer., California. On May 14, 1956, Delbert Nebeker filed under the same authority, small tract application Los Angeles 0141027 for lands in section 17, described as E½SW¼SW¼SW¼. The applications of Mr. Ritter and Mr. Nebeker were rejected on February 9, 1956, and May 16, 1956, respectively, by the Manager for the reason that the "land was found to be too rough and mountainous for small tract development under this Act". A timely appeal was filed by each applicant.

While these appeals were pending before the Director, 180.63 acres in San Bernardino County, California, which included the areas requested by the appellants, were classified by the California State Supervisor under California Small Tract Classification Order 499 as suitable for lease and sale. 21 F.R. 9333-9334, November 21, 1956. The order provided in part that "all valid applications filed prior to November 21, 1956, will be granted as soon as possible, the preference right provided for by 43 CFR 257.5(a)." Subsequently paragraph 1 of the classification order was revoked and the provision that the described lands were classified as suitable for public sale under the Small Tract Act was substituted therefor. 22 F.R. 1682, March 6, 1957.

An applicant who files a proper application prior to official recording in the Land Office of a notice of impending classification of an area in certain circumstances has priority rights. 43 CFR, 1956 Supp., 257.5(a). Under the provisions of the regulation the priority right will be given only if (1) the land is thereafter classified for the type of site applied for; (2) the applicant agrees to conform his application to the area, classification, and dimensions of the tract as specified in the classification order; and (3) where the land is classified for direct sale, the applicant tenders the fair market value of the land when required. The records do not indicate there was in the Land Office a recorded notice of impending classification of the land prior to the filing of appellant's applications. The land was thereafter classified as suitable for direct sale, the appellants therefore should be allowed to purchase the tracts under part (3) of the regulation.

It is well established that the priority right as provided in 43 CFR, 1956 Supp., 257.5(a) differs substantially from a vested right in the land. Undoubtedly the filing of lease offers by the appellants was a factor in the subsequent classification of the land for small tract lease and sale. However, an application merely gives the applicant a preference right to enter the land if it is opened to entry as a result of his application. Cf. State Applications to Exchange Lands Under Section 8 of the Taylor Grazing Act, M-36178 Supp., March 4, 1954; State of Nevada, A-26745 (May 20, 1953).

There is nothing binding about a classification. The classification order may be revoked at any time or revised upon a showing of changed conditions. In the instant case the classifying of the land for lease and sale gave the appellants only a priority right to the tracts if entry is allowed and the applicants conform with all the requisites of entry. The later classification of the land for direct sale divests the appellants of no rights because they retain the preference right.

Accordingly, the decisions of the Manager are reversed and the cases remanded for further action consistent with the views expressed in this decision. The fair market value of the land shall be established by the Manager on the basis of current appraisals.

For the Director:

John B. Piccolo

DISTRIBUTION:
Clifford Z. Ritter
Delber Nebeker
Lands Staff Officer
Appeals List No. 1
EVJudd

In reply refer to:
Los Angeles 0122931
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 24, 1957

Certified Mail
Return Receipt Requested

DECISION

Roy H. Davis : Small Tract Lease Application

Case Closed

The Departmental decision A-27359 of August 15, 1956, affirmed the decision of this Office and of the Manager of the Los Angeles Land Office of this Bureau, rejecting the small tract lease application Los Angeles 0122931 of Mr. Roy H. Davis, 586 W. Fernleaf Avenue, Pomona, California, because of its conflict with prior small tract lease application Los Angeles 0119230 of Mr. Lewis Neill for the same land, namely, the E½NE¼SE¼NW¼ sec. 24, T. 5 N., R. 7 W., S. B.M., California, on the basis that no evidence was presented to show that Mr. Neill was not the first qualified applicant for the land. It was suggested in the Departmental decision that this Bureau consider the lease holdings of Mr. Neill further before closing the case.

In correspondence received subsequent to the Departmental decision, Mr. Davis advised this Office that he believed Mr. Lewis Neill was not qualified under the Small Tract Act (43 U.S.C., 1952 ed., Supp. III, sec. 682a) to receive the lease Los Angeles 0119230 because the Neill family holds two leases under the Small Tract Act, involving adjoining tracts described as theE½NE¼SE¼NW¼ and the E½SE¼SE¼NW¼ sec. 24, above township and range. He stated the former tract is included in the lease issued to Mr. Lewis Neill, in conflict with his own application for this tract (Los Angeles 0122931 submitted December 10, 1954), and that the latter tract is leased to Mr. Russell Briley. Further, he asserted his belief that both applications were filed for these individuals by Mrs. Lewis Neill, who is the wife of Mr. Lewis Neill and the mother of Mr. Russell Briley.

The review of the Neill lease holdings, suggested in the Departmental decision referred to above, has now been completed. The statements of Mr. Davis have been considered carefully, and a full report in the matter has been received from the Office of the Assistant to the State Supervisor for this Bureau in Los Angeles. The record assembled discloses that the lease application Los Angeles 0119230, involving the E½NE¼SE¼NW¼ sec. 24, above township and range, was received from Mr. Lewis Neill, 754 Swarthmore, Pacific Palisades, California, on August 16, 1954, that the lease of the lands was issued to him for a three-year term, effective May 24, 1955, pursuant to a classification of the lands as suitable for leasing under the Small Tract Act, and that the records of the Land Office, Los Angeles, show this is the only lease under the Small Tract Act which has been issued to or applied for by Mr. Lewis Neill. Further, the records of the Land Office do not show any member of Mr. Neill's family, residing with him, has applied for a tract under the Small Tract Act. With respect to the lease Los Angeles 0119113, involving the $E\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$ sec. 24, above township and range, the record shows this lease was issued to Mr. Russell Lee Briley, 206 North Redman, Whittier, California, as of June 6, 1955, pursuant to an application received from him on August 10, 1954. Although Mr. Neill and Mr. Briley are step-father and step-son, respectively, to each other, they do not reside in the same household, and the statement by Mr. Neill in answer to question 5(h) of his application for lease that previous applications or offers had not been filed by him or any member of his family residing with his, appears correct. The fact that Mrs. Neill may have presented both applications to the Land Office in behalf of the applicants, is immaterial.

As noted in the Departmental decision referred to above, the Small Tract Act provides that no person shall be permitted to purchase or lease more than one tract except upon a showing of good faith and reasons satisfactory to the Secretary of the Interior that more than one application is warranted by the circumstances. Departmental regulations provide in this respect (43 CFR 257.4b) that an applicant for lease must identify in his application all other applications under the act, if any, filed by him or any member of his family residing with him.

In view of the foregoing, it appears that Mr. Lewis Neill and Mr. Russell Briley are qualified small tract lessees. Accordingly, no further action appears necessary in this matter, and the case is closed.

This action will become final 30 days from notice hereof upon the parties in interest in the absence of an appeal herefrom to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D.C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp. Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Roy H. Davis then he must serve a copy of all documents on the adverse party, Mr. Lewis Neill, 754 Swarthmore Avenue, Pacific Palisades, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C. in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Edward Woozley
Director

Attachment

DISTRIBUTION:
Mr. Roy H. Davis (Certified Mail)
Mr. Lewis Neill
Mr. Russell Briley
Lands Staff Officer (3)
Appeals List No. 1
FAP

In reply refer to:

Los Angeles 0104196
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 2, 1958

Certified Mail
Return Receipt Requested

DECISION

Franklin P. Butts	:	Small Tract

Manager's Decision Reversed

Mr. Franklin Paul Butts has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Land Office, Los Angeles, California, dated July 31, 1956, rejecting his application for a lease under the provisions of the Small Tract Act, 43 U.S.C., 1952 ed., Supp. IV, 682a.

Mr. Butts has been endeavoring to obtain this particular parcel of land, under various public land laws, for a period of 37 years.

In 1920, the appellant's application for desert land entry on the east half of section 35, Township 7 North, Range 11 West, S.B.M., was allowed. Although the wind and rabbits for several years militated against the land's bearing alfalfa, eventually enough land was in cultivation to permit Mr. Butts to make final proof on the north 160 acres.

The south 160 acres resisted Mr. Butts' agricultural attempts, and in 1934, the land was relinquished by him to his wife, who entered upon it under the provisions of the Desert Land Act, 43 U.S.C., 1952 ed., sec. 321, et seq. It appears that Mrs. Butts acted in good faith in her efforts to reclaim the land, but adverse conditions prevented her from successfully making final proof on the property. Over the years, Mrs. Butts relinquished considerable portions of the land, as it became increasingly apparent that only a small part of it could be put under cultivation. At the time of her death on July 29, 1948, 80 acres remained in her entry, and of these, only 3 or 4 acres, immediately adjacent to her husband's desert land entry, had been cultivated. Several hundred feet of cement irrigation pipe had been laid to effect even this slight reclamation. The 5-acre tract which is the subject of this appeal embraces the land on which the pipe was laid.

Shortly before her death, Mrs. Butts had submitted final proof on the 80 acres, but it was not acceptable, and in 1949, adverse proceedings against the entry were ordered. On August 12, 1949, Mr. Butts, as administrator of the estate, relinquished his wife's entry on the land - but on the same day, he filed an application for public sale for the 80-acre tract thus relinquished.

On January 17, 1951, there was received in the Los Angeles Land Office a notice that this 80-acre tract, as well as other land in the area, was under consideration for small tract classification.

Ordinarily, where an offer to lease a tract is filed, and the land is thereafter classified for the type of site for which the offer was made, the applicant has a preference right to lease. However, an offer to lease, filed subsequent to the receipt by the Manager of notice of contemplated classification, and prior to the issuance of the order effecting the contemplated classification, will not be accorded such a preference right, but will be considered as simultaneously filed with others filed after the notice and up to a certain date. Moreover, offers by veterans of World War II, filed during the period for simultaneous filing, are entitled to a preference right. 43 CFR 257.6. (1954 ed.)

On March 2, 1951, Classification Order No. 262 classified the land embraced in Mr. Butts' application for public sale as suitable for disposal as small tracts. The order contained the usual provisions giving veterans a preference right. 16 Federal Register 2194. Two weeks later, on March 13, 1951, Small Tract Classification Order No. 262 was corrected by deleting from the list of lands it originally covered the 80 acres included in the application for public sale. 16 Federal Register 2811.

Mr. Butts' public sale application was partially rejected by the Manager of the Los Angeles Land Office on January 10, 1952. Although the east 40 acres was classified as suitable for disposal by public sale as a rough and mountainous tract, the west 40 acres was classified as suitable for disposal as small tracts.

Mr. Butts appealed from this decision, but it was affirmed by the Director of the Bureau of Land Management on April 10, 1953. Mr. Butts appealed from this decision, also. In addition, he filed an application under the provisions of the Small Tract Act for the 5 acres adjoining the 160 acres which had been patented to him under the Desert Land Act, supra. This 5 acres had been the portion of his wife's desert land entry which had been most developed, and on which the irrigation pipe was laid. Mr. Butts' small tract application was filed on May 4, 1953. Two months later, an application under the Small Tract Act, supra, for the identical 5 acres was filed by Mr. O'Neill Kenneth Lyles, a veteran of World War II.

No action was taken on either small tract application, pending the disposition of Mr. Butts' appeal from the rejection of his public sale application. That decision was rendered by the Department on February 5, 1954. Its holding is succinctly set forth in the syllabus for the case:

> "The facts that the wife of an applicant for the public sale of land has previously held a desert-land entry on the land applied for, and that the applicant has invested a large amount of money in attempts to cultivate the land and has a few acres currently under cultivation do not give him any legal or equitable right to have the land offered for public sale.
>
> "A tract of land which is completely surrounded by lands held in non-Federal ownership, which is of doubtful value for the cultivation of crops, and in which there has been no evidence of interest for small tract purposes is properly classified as suitable for disposal at public sale as an isolated tract." Franklin P. Butts, A-26801 (February 5, 1954).

Pursuant to this decision, the small tract application of Mr. Butts was rejected on April 28, 1954, and that of Mr. Lyles was rejected on the following day.

The language employed in the notices of rejection was identical:

> "Your application * * * is rejected for the reason that the land involved has been classified for disposition as an isolated tract.
>
> "You are allowed thirty days from notice hereof in which to show why your application should not be finally rejected, or to appeal from this decision to the Director of the Bureau of Land Management; and upon your failure to take such action within the time specified, the case will be closed without further notice to you from this office.
>
> "Please return this letter in case you take any action or desire further information on the subject."

Mr. Butts received his copy of this notice on May 7, 1954; Mr. Lyles, who lived in Florida, received his copy on May 10. Mr. Lyles made no reply, nor did he take any other action with respect to the rejection of his application.

Mr. Butts, on the other hand, embarked upon an extended correspondence with the Land Office Manager which can only be interpreted as an endeavor, in compliance with the notice of April 28, 1954, to show why the small tract application should not be finally rejected.

Since Mr. Butts was the public sale applicant whose success required the rejection of the small tract applications, it would appear, at first blush, that he would not protest the rejection of his small tract application. However, on May 11, 1954, Mr. Butts returned to the Los Angeles Land Office the copy of his notice of the rejection of his application (thus indicating, by the terms of that letter, his interest in pursuing the matter), and with it he submitted a letter, in which he stated that he had recently sold the 160 acres of land adjoining the 80 acres which had been classified as suitable for disposal at public sale. Mr. Butts remarked that he didn't realize that the 160 acres which he had owned had "any connection with the 5 acres * * * which I have leased from the government."

In view of the confusion evidenced by the letter, the Manager of the Land Office understandably replied that he did not know "exactly what it is you want to do," and he invited Mr. Butts to visit the Land Office for a discussion of the matter. Whether such a discussion was held is not revealed by the record, but on May 31, 1954, Mr. Butts wrote to the Land Office Manager that he was only interested in buying the 5 acres, "if such is possible". Apparently, Mr. Butts realized by then that in selling his adjoining property, he had lost his preference right to purchase the land at the public sale (cf. 43 CFR 250.11(b)) and therefore he was attempting to secure a right to the land containing the improvements by proceeding under the Small Tract Act.

Accordingly, on June 8, 1954, Mr. Butts was requested to withdraw his public sale application, and he was informed that "there are other applications on the land and we do not know how it will be disposed of now, but can let you know in due time whether or not you will be offered a small tract lease."

In the meantime, the Department, which, in its decision of February 5, 1954, had stated that there appeared to be no evidence of interest in small tracts on the land concerned, was apprised that there was, in fact, keen interest in obtaining the land under the Small Tract Act. After an investigation of the situation, the Department, upon reconsideration, on November 15, 1954, rendered a second decision which, in effect, reinstated the April 10 decision of the Bureau of Land Management. By this decision, the west half of the eighty-acre tract was classified as suitable for disposition at public sale as a tract too rough for cultivation, and the east half was classified as suitable for disposition as small tracts. Franklin P. Butts, A-26801 Supp. (November 15, 1954).

Mr. Butts was informed, in a letter dated December 22, 1954, that his small tract application could be allowed when the classification order made pursuant to the Department's revised decision was received at the Land Office. He was again requested to file a withdrawal of his public sale application, if he was no longer interested in the public sale.

Mr. Butts filed the withdrawal, as requested, and was notified in a letter dated January 3, 1955, that the withdrawal did not affect his small tract application, but merely made further action on the other applications possible.

In a letter dated January 28, 1955, the Land Office Manager wrote to Mr. Butts:

> "Information on file in your case record indicates that you are interested in obtaining title to the land upon which you have placed improvements and the field report shows that your Small Tract Application * * * will enable you to do so."

Slightly over a month later, on March 1, 1955, California Small Tract Classification Order No. 439 was issued, classifying the land involved "for lease and sale for homesite purposes only". The order continued:

> "Classification is made for the benefit of the individual small tract applicants whose petitions were of record on the date of classification. Leases will be issued in accordance with the existing applications in order of priority of filing."

The order contained no mention of any veterans' preference.

But no immediate action was taken to allow Mr. Butts' application. Instead, nine months later, on December 12, 1955, a letter was written to Mr. Lyles, informing him that the land for which he applied had been classified for small tracts, and that he, as a veteran claiming preference on a small tract filing, should submit a copy of his discharge. When, after six months, no answer was received from Mr. Lyles, he was again invited to submit his discharge papers, in order to establish a preference right to the lease.

In response to this second communication, Mr. Lyles submitted a copy of his discharge, and on July 31, 1956, Mr. Butts was sent a copy of the decision rejecting his small tract application. The decision reads in part: "There was an 'Impending Classification Notice' for this section dated January 17, 1951, which entitled veterans to a preference filing. This tract has been awarded to a veteran, LA 0106144, Mr. O'Neill Kenneth Lyles, 6861 S. W. 78th Terrace, Miami, Florida, to whom a lease will issue following the termination of your appeal period."

It is from this decision that the present appeal is taken.

Although the factual background of this case makes it possible to raise some rather involved questions as to whether a veteran is entitled to a preference right to file for a small tract in the complicated situation involved here, such complexities need not be considered.

By his decisions of April 28 and 29, 1954, the Los Angeles Land Office Manager rejected both Mr. Butts' and Mr. Lyles' small tract applications. Mr. Lyles did not appeal, nor take any other action in the matter; Mr. Butts attempted to show why his application should not be finally rejected. That Mr. Butts had diligently proceeded in the case, and that he was not foreclosed by virtue of the April 28 decision, was recognized by the Land Office Manager who, before allowing Mr. Lyles' application, issued a decision finally rejecting Mr. Butts' application. Such a decision would have been unnecessary had not Mr. Butts, by his diligent pursuit of the 5-acre tract, preserved whatever rights an application can initiate. John R. Moran, A-27463 (October 21, 1957).

Mr. Butts' application was rejected because it was assumed that Mr. Lyles was entitled to a veteran's preference. Whether such an assumption is valid need not be decided; it is well settled that an applicant for public land whose application is rejected and who fails to appeal within the time allowed for appeals loses whatever rights he had under his application, even though the right thus lost is a preference right to enter the land. Charles D. Edmonson, et al., 61 I.D. 355, 362 (1954).

Therefore, Mr. Lyles, by failing to appeal, lost any claim he may have had either to the 5-acre tract, or to a preference right of filing.

Accordingly, the decision of the Manager is reversed, and the case remanded for the issuance of a lease under the Small Tract Act to Mr. Butts, if all else be regular.

Mr. Lyles is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Lyles, then he must serve a copy of all documents on the adverse party, Mr. Franklin P. Butts, 5033 South Van Ness Street, Los Angeles 62, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:
John B. Piccolo

Attachment

DISTRIBUTION:

Mr. Franklin Paul Butts (Regular Mail)
Mr. O'Neill Kenneth Lyles (Certified Mail)
Hon. William F. Knowland, U. S. Senate
Lands Staff Officer (1)
Appeals List No. 1
MG

29073

appeal to Sec.
affirmed A-27627 8-15-58

In reply refer to:

Sacramento 048151
051356

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 17, 1958

Certified Mail
Return Receipt Requested

DECISION

John W. Southard
Clarence H. Pittman
:
:
:

Small Tract Applications

Manager's Decision Affirmed

On March 17, 1954, John W. Southard filed an offer to lease (Sacramento 048151) the SW¼NE¼NE¼SW¼ and NW¼SE¼NE¼SW¼, sec. 14, T. 32 N., R. 5 W., M.D.M., California under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C., 682a), as amended. The land applied for was, at the time of filing, withdrawn under first form reclamation withdrawal for use of the Bureau of Reclamation in connection with the Central Valley Project.

By decision of April 29, 1955, the Manager of the Land Office rejected the applicant's offer to lease because the application form (4-776, Nov. 1951) was obsolete. However, the decision required the applicant to refile the application on the new form (4-776, Jan. 1955) in accordance with the new regulations which had become effective on March 11, 1955. Mr. Southard was allowed 30 days to complete the new form (attached to decision) and return it to the Land Office for issuance of the lease. By Classification Order No. 444 dated March 21, 1955, the lands embraced in Mr. Southard's application, and other lands, had been classified for homesite purposes under the provisions of the Small Tract Act of June 1, 1938, as amended, supra. The reclamation withdrawal was revoked as to the lands included in Classification Order No. 444 by an order of the Bureau of Reclamation, which was concurred in by the Director, Bureau of Land Management on Nov. 14, 1955, and published in the Federal Register of Nov. 19, 1955, at page 8581.

The decision was mailed to Mr. Southard by registered mail to the only address of record, which was General Delivery, Redding, California. It appears that in the meantime appellant had moved to Happy Camp, California, without notifying the post office nor the Land Office of his new address. The decision was returned to the Manager, "unclaimed" after it had been held for the required 30-day period.

On October 4, 1955, Clarence H. Pittman, filed an application, Sacramento 051356, to lease or purchase the lands in question under the Small Tract Act, as amended, supra. Mr. Pittman's application indicated that the land was not occupied, however, there is a statement in the application regarding improvements which reads "recheck shows cabin just over line." As small tract leases are issued subject to any valid existing rights, a lease was issued by the Manager to Mr. Pittman on November 1, 1955, for a three-year period.

On November 5, 1956, Mr. Southard filed a letter with the Manager protesting the issuance of the lease to Mr. Pittman on the ground that he has improvements on the land. By decision of March 28, 1957, the Manager dismissed the protest and allowed the protestant 90 days to remove the improvements. From this decision Mr. Southard has appealed to the Director of the Bureau of Land Management.

In the appeal Mr. Southard contends that he is the owner of the tract; that he bought the land from a third party in 1945, where he has built a house; that he lived in the property for ten years and during that time kept up taxes and assessments; and that a lease for the tract should be issued to him. However, these assertions, even if established, would not entitle the appellant to any additional consideration in so far as his small tract offer is concerned. Cf. Franklin P. Butts, A-26801 (February 5, 1954).

In the case of Paul R. Brown, A-26923 (August 26, 1954), the question presented was considered by the Department. In that case the Department stated as follows:

> "In the absence of a specific statute or regulation requiring a formal notification of a change of address the ordinary customs and practices of the business world should be applied to the facts and circumstances in the situation involved."

In the Brown case the Department found that there was in existence ample evidence to put the land office on notice of the fact that the applicant could no longer be reached at the address listed in his original application but that in all likelihood a letter would reach him at another address. The Department held that the notice sent to the address listed in his original application was no notice at all.

There is no evidence in the record in the case at bar which would put the land office on notice that Mr. Southard could no longer be reached at the address given in his original application. Therefore, the instant case is distinguishable from the Brown case and the Manager's action in closing the case on August 2, 1955, was correct.

In the case of William D. Cunningham, A-27297 (May 28, 1956), the Department held that one who has made improvements in the public land under an assumption of right but who loses his right may, under certain circumstances, be allowed a reasonable time within which to remove any improvements from the premises that can be removed without substantial damage to the land. The appellant is allowed 90 days from receipt of this decision within which to remove any improvements that can be removed without substantial damage to the land or to the improvements. In the event the appellant fails to remove the improvements within the specified period of time, Mr. Pittman, the lessee, will be allowed to do what he deems appropriate in the light of their low value.

The action of the Manager closing the case and dismissing Mr. Southard's protest is affirmed.

Mr. John W. Southard is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee.

The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Southard then he must serve a copy of all documents on the adverse party, Mr. Clarence H. Pittman, Post Office Box 347, Anderson, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

Attachment

DISTRIBUTION:
Mr. John W. Southard (Certified Mail)
Mr. Clarence H. Pittman (Regular Mail)
Hon. Clair Engle, Member of Congress
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:

Los Angeles 081435
086557
093241
0100382
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 22, 1958

DECISION

Lois E. Wilkins :
Hubbard D. Stevens, Jr. : Small Tract
Lowell D. Poland :
Kenneth R. Burns :

Manager's Decisions Reversed
Cases Remanded

The above-named individuals have appealed to the Director, Bureau of Land Management, from decisions of the Manager, Land Office, Los Angeles, California, dated April 5, 1956 and June 27, 1956, rejecting their respective applications to purchase because their purchase applications were filed after their leases, issued under the provisions of the Small Tract Act of June 1, 1938, as amended (52 Stat. 609; 43 U.S.C., sec. 682a), had expired.

The appellants, shortly after their respective lease terms, or extended lease terms had expired, filed applications to purchase the tracts involved. Each application to purchase stated that the applicant had fully complied with all the terms and conditions of the lease and the regulations under which it was issued and had constructed certain improvements on the land. It further appears that each appellant had constructed improvements appropriate for which the land had been classified and lease originally issued and that if the purchase applications had been timely filed, each would be entitled to purchase the tracts involved.

In a recent decision, Albert H. Dobry, George H. Borevay, 64 I.D. 116, (May 8, 1957), the Department held that the regulation[1] governing applications to purchase under small tract leases carrying an option to purchase is not mandatory, but directory, as to the time when an application to purchase is to be filed and that a purchase application filed shortly after the expiration of the lease is not unreasonably late where no action has been taken to open the land to other filings and no intervening rights have attached to the land.

---

[1] 43 CFR 257.13

A purchase application, however, must be filed within a reasonable time after the expiration of the lease term. What constitutes a reasonable time necessarily depends upon the facts and circumstances of each case.

The records before us show that Wilkins filed his purchase application within 30 days after the lease expiration; Stevens within 5 days; Poland within 21 days and Burns within 35 days. In the circumstances here involved, it is determined that the appellants filed their respective purchase applications within a reasonable time after the lease expirations. Since each has made a showing of substantial compliance with the requirements of construction of satisfactory improvements on the tracts appropreate to the type of use for which the leases issued, their applications are entitled to further consideration.

Accordingly, the Manager's decisions are reversed, the case files are remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles, California, for further processing. If it is found that the appellants have substantially complied with the terms and conditions of their lease with respect to the improvements placed upon the land, they will be permitted to purchase their respective leased tracts.

For the Director:

A. H. [illegible]

DISTRIBUTION:

Mrs. Lois E. Wilkins (Los Angeles 081435) Regular Mail
Mr. Hubbard D. Stevens, Jr. (Los Angeles 086557) Regular Mail
Mr. Lowell D. Poland (Los Angeles 093241) Regular Mail
Mr. Kenneth R. Burns (Los Angeles 0100382) Regular Mail
Lands Staff Officer
Appeals List No. 1
Each Case File
BF

In reply refer to:

Los Angeles 094204
0107343
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

January 22, 1958

DECISION

Rubert Mairiam Justus	:	Small Tract
John E. Hansen	:	

Applications to Purchase Approved

The Bureau's State Supervisor at Sacramento, California, has forwarded to the Director, Bureau of Land Management, the case records of the above named individuals for determination concerning whether they may be permitted to purchase the land embraced in their small tract leases, as amended.

Justus was issued lease Los Angeles 094204 effective April 15, 1952, under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., sec.682a), for a five acre tract described as the E½NE¼NW¼NE¼ sec. 30, T. 7 N., R. 4 W. SBM., California. The lease was due to expire on April 14, 1955, but was renewed to April 14, 1956. Hansen was issued small tract lease Los Angeles 0107343 effective October 30, 1953. His lease for the W½NE¼NW¼NE¼ of sec. 30, was due to expire on October 29, 1956. However, by inadvertence, Justus constructed improvements on Hansen's leasehold. To remedy this error, Justus and Hansen agreed to exchange tracts. To effect such exchange they requested amendment of their respective leases.

The agreement to exchange properties was, in effect, cross assignments of the leases and is approved as such. (43 CFR 257.12). Because of the assignment, Justus became the owner of lease 0107343. On August 1, 1956, prior to the expiration of the lease term, he applied for purchase of the tract. Hansen filed application to purchase on March 26, 1956. Giving effect to the cross assignments it is clear that both lessees filed timely applications to purchase the respective tracts during the lease terms. It being shown that Messrs. Justus and Hansen have complied with all the terms and conditions and have erected the improvements required by their leases, they are authorized to purchase their respective tracts.

Accordingly, the case records are being returned to the Manager, through the Assistant to the State Supervisor, for further processing of the respective purchase applications.

For the Director:

DISTRIBUTION:

Ass't. to SS (Los Angeles) w/case files L.A. 094204 and 0107343
Mr. Rubert Mairiam Justus (Regular Mail)
Mr. John E. Hansen (Regular Mail)
Lands Staff Officer
Appeals List No. 1
BF

In reply refer to:

Sacramento 043512
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 5, 1958

DECISION

George C. Cottingham	:	Small Tract Application
	:	
	:	

Manager's Decision Vacated
Case Remanded

George C. Cottingham has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Sacramento, California, dated June 15, 1956, which required Mr. Cottingham to amend his application, Sacramento 043512, filed under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a), to include the SE$\frac{1}{4}$SW$\frac{1}{4}$ of lot 4, sec. 5,T. 33 N., R. 9 W., M.D.M., California, instead of the land applied for.

The record discloses that the lands in Lot 4 of Sec. 5 have been classified as suitable for disposal under the Small Tract Act. However, the Bureau's State Office at Sacramento has reported that certain problems have arisen which require a further field examination and the preparation of a supplemental plat of survey to describe the lands classified for small tract purposes in Lot 4. Our State Office also stated that recommendations for the preparation of a supplemental plat as a basis for the issuance of final certificates is dependent in part on the action taken on Mr. Cottingham's appeal, and requested that in view of the circumstances his case be returned to that office for further consideration.

Accordingly, the Manager's decision is hereby vacated, and the case is remanded to the Manager through the Bureau's State Supervisor at Sacramento, California, for further consideration and appropriate action.

For the Director:

A. H.

DISTRIBUTION:

Mr. George C. Cottingham (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

30718

In reply refer to:
Sacramento 052653
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 11, 1958

DECISION

Gwynn A. Bland : Small Tract Application

Manager's Decision Reversed
Case Remanded

Gwynn A. Bland has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Sacramento, California, dated August 30, 1956, rejecting his application, Sacramento 052653, filed pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, 682a), for the reason that the land was unfit for small tract classification due to adverse topography.

The appellant alleges that the tract was classified incorrectly; that he has walked over the land several times and found that it is ideally suited for a homesite; that there are two excellent building sites, both located on knolls with just enough elevation to provide a good view of the countryside; that there is an excellent approach to the property along the north line and a good road can be constructed with very little cost; and that the topography of the tract is quite similar to several adjoining tracts which have been allowed for homesites.

Additional information developed indicates that: the appellant is well acquainted with the land and able to spend a substantial amount in developing it; and with diligent effort and expenditure of sufficient money there is a reasonable prospect of developing the land to the extent necessary for compliance with the small tract regulations.

Accordingly, the Manager's decision is reversed, and the case remanded to the Manager through the Bureau's State Supervisor at Sacramento for further action looking to the issuance of a lease to Mr. Bland, if all else be regular.

For the Director:

A. H.

Distribution:
Mr. Gwynn A. Bland (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR
SO (California) with case record Sacramento 052653

32292

In reply refer to:

Los Angeles 066109
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 12, 1958

Certified Mail
Return Receipt Requested

DECISION

Zella P. Miller	:	Small Tract
	:	
	:	

Manager's Decision Affirmed

Zella P. Miller has appealed to the Director of the Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated June 3, 1953, rejecting her application for a small tract lease. The application was rejected upon the ground that the land had been previously classified as unfit for homesite development and suitable only for grazing.

The Bureau records indicate that the land is in a steep, rough area of the San Bernardino Mountains, and that the topography of the immediate area precludes homesite development.

The appellant asserts that she believes that the land is suitable as a residence and place to raise turkeys. She asserts that there is an adequate amount of water for use upon the land, and that she and six veterans of her family are now living upon the land.

The record reveals no error in the classification nor has appellant submitted evidence that would justify overturning the classification. The Department has held that where the classification of land applied for is adverse to the applicant, the burden is on him to show in what respect the adverse classification is in error. In the absence of an error which appears on the face of the record, the applicant must show by positive and substantial evidence that the land is suitable for the desired use and that the adverse classification is erroneous. Harry E. Andersen, A-27313 (June 14, 1956). A mere statement by the applicant that the facts are not as stated in the classification is insufficient. Mary Refugio Jackson, et al., A-27236 (February 29, 1956).

Mrs. Miller has failed to show, or offer, any evidence to indicate that the topography of the rejected land is such that the land would be suitable for small tract purposes or that it was improperly classified. The fact that turkeys might be raised upon the land is not evidence that the land should be classified as suitable for small tract purposes. Small tract applications are properly rejected where the land is unsuitable for such development because of topography. See Harry Carson, et al; A-27289 (May 28, 1956).

The decision of the Manager is affirmed.

Zella P. Miller is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Zella P. Miller then she must serve a copy of all documents on the adverse parties, Louetta Grace Boadway, 11605 South Gurley Avenue, Downey, California; and Thomas F., Thomas L. and Lawrence C. Hamilton d/b/a Hamilton Ranch, Post Office Box 15, Big Bear Lake, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

A. H. Dw

Attachment

Distribution - Page 3

DISTRIBUTION:

Mrs. Zella P. Miller (Certified Mail)
Mrs. Louetta Grace Boadway (Regular Mail)
Thomas F., Thomas L. and Lawrence C. Hamilton (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

In reply refer to:
Los Angeles 093854
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 17, 1958

DECISION

Donald A. Cole : Application to Purchase
: Under Small Tract Act

Decision of Manager Reversed
Case Remanded

Donald A. Cole has appealed to the Director, Bureau of Land Management, from a decision issued November 2, 1956, by the Manager, Land Office, Los Angeles, California, which rejected his application to purchase a tract of land leased to him pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., sec. 682a). The reasons for rejecting the application as stated in the Manager's decision were that the improvements placed upon the land did not include sanitary facilities and the cabin itself was not completely finished, the stucco work being incomplete, the wire uncovered, and the exterior woodwork of the cabin needed painting.

The appellant's lease was issued for a term of three years, effective March 27, 1952, and stated that the lessee was entitled to purchase the tract after the expiration of one year from the date of the lease, provided he made the improvements required and otherwise complied with the terms and conditions of the lease. The lessee agreed under the terms of section 2(a) of the lease to construct upon the land substantial improvements appropriate for the use for which the lease was issued.

The appellant applied to purchase the tract stating that he had placed on the land a 12 x 16 foot stucco building frame with three windows and two doors, built according to the San Bernardino County Building Code, also a small outdoor toilet building facility. The approximate cost was given as $350. A photograph received with the application to purchase plainly shows the cabin to be of the size and type described by the appellant and of substantial construction.

In his appeal, filed November 28, 1956, the appellant alleged he wrote two letters concerning the tract or what he should do to renew his lease but received no reply, and that during the past year and a half he had not done any more to the property, awaiting a reply. He stated the outhouse he had on the tract was perhaps blown down during a windstorm or was stolen but that he would build another. The record shows a thorough search of the Land Office records failed to disclose that the two letters referred to by Mr. Cole were ever received.

The option to purchase under the appellant's lease was conditioned upon the requirement that the lessee place satisfactory improvements on the land. The appellant asserts he deferred doing anything more on the improvements pending a reply to letters he allegedly wrote concerning a renewal of his lease. The fact that he constructed a 12 x 16 foot substantial building, which will be of good appearance when completed with an outer coating, is indicative of a bona fide effort on the part of the appellant to comply with the provisions of the lease with respect to placing improvements on the land during the term of the lease. Cf. Joseph L. Kirg, A-26843 (December 18, 1953). There is thus "no indication of such bad faith on appellant's part" as to deprive him of an opportunity to complete his improvements. George M. McKissick, A-26678 (July 3, 1953).

The appellant has substantially complied with the requirements of his lease. Therefore, the decision of the Manager is accordingly reversed and the case remanded to the Land Office Manager, through the Assistant to the State Supervisor of this Bureau at Los Angeles, California, with instructions to process Mr. Cole's application to purchase the tract, if all else be regular.

For the Director:

A. H.

Attachment

Distribution:

Mr. Donald A. Cole (Regular Mail)
Asst. to SS(LOS Angeles) w/Case record, Los Angeles 093854
Lands Staff Officer (1)
Appeals List No. 1
MAG

32292

In reply refer to:

Los Angeles 0137046
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 24, 1958

DECISION

Frances Cain	) :)	Small Tract

Manager's Decision Reversed
Case Remanded

Frances Cain has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated April 9, 1956, which rejected her bid for the purchase of a small tract offered for sale at auction. The rejection was for the reason that the appellant failed to show need for a second small tract.

The appellant was the only bidder for a small tract described as Lot 8, section 26, T. 17 S., R. 5 E., S.B. Meridian, California, offered for sale at an auction held December 8, 1955. At a prior auction Mrs. Cain had obtained a small tract known as Lot 10 of the same section, range and township. [1] On December 28, 1955, the appellant was notified that she should submit to the Manager "reason(s) and need for a second tract."

Responding to this request the appellant stated that the natural approach to the obtained tract, Lot 10, was across the desired tract, Lot 8. Lot 10 was described as a hilltop above a rocky cliff which "affords a lovely view and cabin site." Below the cliff, on Lot 8, there is a stream bed. She asserted that to obtain domestic water for suitable small tract development, it would be necessary that she drill a well on Lot 8 and pump the water to Lot 10.

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[1] Lot 10, consisting of five acres, was patented to the appellant on May 16, 1956.

The appellant asserts that Lot 11, which adjoins Lot 10 on its west boundary would be even more satisfactory for these needs than would be Lot 8. Lot 8 merely corners Lot 10. However, subsequent to the appeal, patent was issued on Lot 11 to another purchaser, and patent was also issued on Lot 9 which borders Lot 10 on the north. Both patents, as did the patent issued to Mrs. Cain, reserved a fifty-foot boundary right-of-way.

It is provided in the regulations, 43 CFR, 1956 Supp., 257.4(c), as follows:

> "Generally no person will be permitted to obtain by lease or purchase more than one tract under the act. Where more than one tract is needed, however, each tract must be the subject of a separate application, complete in itself, and must be accompanied by a satisfactory showing that the allowance of more than one application is warranted by the circumstances * * *."

Moreover, it was indicated in the Chief Counsel's memorandum of August 2, 1950, that a person who obtains, by lease or purchase, a tract of land under the Small Tract Act does thereby exhaust all his rights thereunder; but upon a proper showing, he may be permitted to lease or purchase additional tracts or hold leases for more than one tract at the same time. Generally, however, a person will not be permitted to hold more than one small tract under the act.

The principle of the allowance of more than one tract is therefore clear. The record contains no description of the topography of the land other than the assertions made by the appellant. The assertions of the appellant, if established, as to the need of an additional tract as a natural access and a practical source of domestic water may permit the award of a second tract. At least sufficient doubt is raised to warrant further consideration of the appellant's contentions and good faith. Since the appellant is not opposing an adverse classification, she is not subject to the same standard of clear and positive proof as if she were appealing an adverse classification. She must satisfactorily show, however, that the allowance of purchase of Lot 8 is warranted in the circumstances.

Accordingly, the Manager's decision is reversed and the case is remanded through the Bureau's Assistant to the State Supervisor at Los Angeles, to the Manager, for further investigation of the facts and further consideration of appellant's showing as to her need for a second tract consistent with this decision.

For the Director:

A. H.

DISTRIBUTION:
Ass't. to SS(Los Angeles)w/Case record
Mrs. Frances Cain (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

In reply refer to:

Los Angeles 0101920
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 25, 1958

DECISION

Francis Thurston Bussell : Small Tract

Manager's Decision Reversed, Case Remanded

Francis Thurston Bussell has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office at Los Angeles, California, dated June 26, 1956, which held for rejection his "Application for Purchase or Renewal of lease under the Small Tract Act." The application was rejected because it "was filed following the actual expiration of the lease - November 23, 1955."

A three year small tract lease was issued to the appellant for a period of three years on June 12, 1953, pursuant to the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a). The lease therefore expired on June 11, 1956, and not on November 23, 1955, as stated in the Manager's decision. The application for "Purchase or Renewal" was filed on June 21, 1956, on which the appellant stated he wished to renew the lease. The application contained a statement that "The lessee has fully complied with all the terms and conditions of the lease * * * and has constructed the following improvements on the land: One house, not yet completed, valuation approximately $600."

The Manager, in rejecting the appellant's application, viewed the application as a renewal application. Assuming that the application was for renewal of the lease, the Manager was correct in his decision. However, the form filed by the appellant can be construed as either a renewal application or an application for purchase. In the particular circumstances of this case the objectives of the Small Tract Act can be more fully met if the application is considered as a purchase application.

The Assistant Secretary of the Interior has held that the Departmental regulation governing the filing of applications to purchase tracts included in small tract leases which carry options to purchase, is not mandatory, but only directory, as to the time when an application to purchase must be filed, and that where an application to purchase is made within a reasonable time after the expiration of the lease term, the lessee will not be considered in default, and the application to purchase may be acted upon. Albert H. Dobry, 64 I.D. 116 (1957).

The filing of the application ten days after the expiration of the lease is within a reasonable time. Therefore, we can now consider the purchase application on its merits.

Subsequent to filing of the appeal, a field examination of the small tract was conducted on January 27, 1958. The examiner found that the improvements on the tract included a substantial stucco cabin, 12 x 16 feet with a 9 x 16 porch, a 1000 gallon water tank, and outbuildings consisting of a storage shed, pigeon loft and a sanitary facility. There was a 26 foot house trailer on the tract. The tract is the permanent residence of the appellant and his family.

The appellant has substantially complied with the requirements for purchase of the tract. Accordingly, the decision of the Manager is reversed and the case remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles for further action consistent with this decision.

For the Director:

DISTRIBUTION:

Mr. Francis T. Bussell (Regular Mail)
Assistant to the State Supervisor (Los Angeles) w/case file LA 0101920
Lands Staff Officer
Appeals List No. 1
EVJ

32292

appeal to be
affirmed A-27701 - 11/14/58

In reply refer to:
Los Angeles 0119761, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 28, 1958

Certified Mail
Return Receipt Requested

DECISION

John A. Peel,	:	Small Tract Los Angeles	059740
Arthur J. Edwards,	:	" " " "	059751
James S. Hazen, and	:	" " " "	059792
Donald S. Peake,	:	" " " "	089735
Appellants	:		
Richard Sauer,	:	Small Tract Los Angeles	0119613
Maurice Emory Clark,	:	" " " "	0119261
Ross Sellers Phillips, and	:	" " " "	0116866
Violet May Lund,	:	" " " "	0119761
Appellees	:		

Decision of the California State Supervisor Affirmed

The appellants, above-named, have appealed to the Director, Bureau of Land Management, from a decision of the Bureau's State Supervisor at Sacramento, California, dated August 22, 1956, dismissing their protests concerning the issuance of leases under the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 1952 ed., Supp. IV, sec. 682a), to the appellees, above-named. In effect the Supervisor's decision ratified the action of the Manager, Land Office, Los Angeles, California, in issuing leases to the appellees for tracts which were previously embraced in leases issued to the appellants.

Separate appeals have been filed in each case. However, they are substantially the same and involve the same general facts and law. The records show that the appellants, or their predecessors in interest, related to each other and in a common endeavor, applied for and were granted leases for certain tracts in Apple Valley, California, of 5 acres each, under the Small Tract Act. Their leases, for lands classified for lease and sale, were issued in August and October, 1951, for three year terms, and were due to expire in August and October, 1954. Each lease contained the same provisions. Pursuant to applications filed by the appellees, the Manager issued separate leases to them for the identical tracts previously leased to the appellants. This was done without notice to the appellants. The appellants show that during their respetive lease terms they had each poured concrete footings and slabs, preparatory to the construction of improvements required by their leases at a cost of $45.00 each. The appellants did not apply for renewal of their leases prior to the expiration thereof; the leases by their terms having expired, the cases were closed by the Manager. The Manager subsequently issued leases to the appellees.

The appellants' leases provided in pertinent part that the "lessee may purchase it (the tract) after the expiration of 1 year from the date of this lease, provided he has made the improvements herein required, and fully complied with the terms and conditions of this lease". The leases further provided that:

> "1. This lease is not subject to renewal unless the lands have been classified for lease only, or upon a showing satisfactory to the lessor that the failure to apply for the purchase of the tract is justified and that nonrenewal of the lease would work an extreme hardship on the lessee. The lessee may apply for renewal of the lease, not more than 6 months nor less than 60 days prior to the expiration thereof, and, if it is determined that a new lease should be granted, he will be accorded a preference right to a new lease, * * *
>
> "2. The lessee agrees:
> (a) To construct upon the land * * * substantial improvements appropriate for the use for which the lease issued. * * *"

The appellants do not allege that they have complied with the lease provisions concerning the construction of improvements, nor do they contend that they should be permitted to purchase. They contend (1) that they applied for renewal of their leases not more than 6 months nor less than 60 days prior to the expiration of their leases, (2) that they have made substantial improvements on the land and that failure to renew would cause an extreme hardship on them and they are, therefore, entitled to renewal of their leases, and (3) that the appellees obtained their leasesthrough misrepresentations that there were no improvements on the lands. They have protested the issuance of other leases for the same tracts in preference to favorable action on renewals of their leases.

A thorough check of the Land Office records fails to show that the appellants applied for renewal of their leases at any time during their lease terms. In fact, the first evidence in the record that the appellants were still interested in the tracts was subsequent to the issuance of leases to the appellees, the present lessees.

Inasmuch as the record was devoid of any indication that the appellants desired renewal or extension of their leases, or that they had made valuable improvements on the leaseholds, the Manager had no alternative other than to consider the (appellants') leases expired and the cases closed. He thereafter properly, and in accordance with the regulations in effect at that time (43 CFR, 1954 ed., Part 257), issued new leases for the tracts involved.

With respect to the appellants' contentions that the appellees' misrepresentations on their applications invalidates their leases, the records show that Phillips in Los Angeles 0116866 stated there was a slab on the land. The other appellees stated that there were no improvements on the land. It is well settled that a lease may be canceled for fraud practised upon the Government. Antonio D. Rocco, et al., A-26434, July 11, 1952. In the instant situation, however, it is not clear that the slabs were observed by the appellees, other than Phillips. Consequently, it appears from an examination of the records that there is no substantial basis for holding that the appellees made such material misrepresentations as to justify cancellation of their leases. William W. Tedder, A-25853 (October 26, 1950). The new leases, issued to the appellees, are binding, subsisting contracts of the United States Government and may not be unilaterally abrogated or avoided by the Government. The lands embraced in the leases issued to the appellees, having been validly appropriated to private use under the Small Tract Act are segregated from the public domain, and the Secretary of the Interior has no authority to issue new or renewal leases for the identical tracts to the appellants. Accordingly, the Manager's action in issuing the several leases to the appellees was correct and proper. The decision of the State Supervisor, dismissing the protests, is affirmed.

When this decision becomes final, the present lessees, if they have made the required improvements upon the land and have otherwise complied with the other terms and conditions of their respective leases, will be permitted to purchase the leased tracts. However, before patent may issue, the present lessees are required to reimburse the appellants for the value of the improvements previously placed on the land and which are of value to them. The cost of the slab, shown to be the only tangible improvement on each tract, has been established to be $45.00. If the present lessees have used the slabs, placed on the leaseholds by the former lessees, then they are each required to pay the sum of $45.00 to the former lessees of the respective leaseholds. If the improvements have not been used by the present lessees then reimbursement is not required. The Manager, of the Los Angeles Land Office, shall ascertain, prior to issuance of a cash certificate whether reimbursement shall be made. If the present leases for the tracts in issue, terminate without purchase, then the tracts "shall not be subject to further application until an order is issued specifying the time and manner in which the tract shall be made available." (Circular 1899, effective March 11, 1955; 43 CFR 257.18(a)).

The appellants, above-named, are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee for each separate application on which the appellant is seeking favorable action. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by any of the persons allowed to appeal then that person must serve a copy of all documents on the adverse party within 15 days after filing the document and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

If appeal is taken in the case of John A. Peel, the person to be served is Richard Sauer, 3231 Broadmoor Blvd., San Bernardino, California.

In the case of Arthur J. Edwards, the person to be served is Maurice Emory Clark, Box 378, Victorville, California.

In the case of James S. Hazen, no one need be served.

In the case of Donald S. Peake, the person to be served is Violet May Lund, 9131 Denker Street, Los Angeles 47, California.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Mrs. Mayowen Peel (Certified Mail)
Mr. Arthur J. Edwards (Certified Mail)
Mr. James S. Hazen (Certified Mail)
Mr. Donald S. Peake (Certified Mail)
Mr. Richard Sauer (Regular Mail)
Mr. Maurice Emory Clark (Regular Mail)
Mrs. Violet May Lund (Regular Mail)
Hon. Harry R. Sheppard, Member of Congress
Hon. Joe Holt, Member of Congress
Lands Staff Officer
Appeals List No. 1
BF

32292

appeal to Lee

In reply refer to:

affirmed A-27733 12-15-58

Sacramento 050062
051215
051218
051707
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 26, 1958

Certified Mail
Return Receipt Requested

DECISION

Russell Stewart Lee : Small Tracts
:
:
:

Manager's Decision Reversed
Case Remanded

On April 8, 1955, Russell Stewart Lee filed an application in the Land Office at Sacramento, California, under the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 1952 ed., Supp., IV, sec. 682a) for 5 acres of the public domain described as the E½NW¼SE¼NW¼ sec. 23, T. 33 N., R. 5 W., M.D.M., California.

By his decision of May 16, 1957, the Manager of the Land Office informed Mr. Lee that the lands within the area in which he had applied had been classified for direct sale, and that since his application had been filed prior to March 11, 1957, he was entitled to a preference to purchase under the regulation 43 CFR 257.5(a) provided he would conform his application to the area and dimensions of the tract specified in the classification order and tender the fair market value.

The description of the tract to which Mr. Lee was required to conform his application is the N½N½NW¼SE¼NW¼ sec. 23, designated as tract 10. The tract contains 2.5 acres of land and is valued at $625.

From the Manager's decision Mr. Lee took an appeal in which he asserts that having filed his application some two years or more prior to the Manager's decision and being the first to file an application for the land involved, he is entitled to the five acre tract for which he applied. Mr. Lee also asserts that tract 10 is worthless for a residence site in that there is no logical or economically feasible access to the tract. It appears that there is a paved road running in an approximately north south direction along the east side of the five acre tract for which

Mr. Lee applied, but that where tract 10 fronts on the road there is, according to Mr. Lee's appeal a steep, rocky cliff rising abruptly from the road making access from the road impossible. With his appeal Mr. Lee has submitted photographs which would seem to support his contentions in this respect although it is not possible from the photographs to identify the boundaries of tract 10.

The regulations contemplated that no lease will be issued or sale authorized, however, prior to classification of land for such purpose, 43 CFR 257.3(a), and upon classification there are two types of priority rights, one of which is for any small tract applicant who files prior to official recording of plans for classification of an area. 43 CFR 257.5(a). Such an applicant is to receive priority to purchase a tract only if (1) the land is thereafter classified for the type of site applied for; (2) the applicant agrees to conform his application to the area, classification, and dimensions of the tract as specified in the classification order; and (3) where the land is classified for direct sale, the applicant tenders the fair market value of the land required.

The area in which Mr. Lee is interested was classified on April 26, 1957, for direct sale under classification order No. 512. 22 F.R. 3187. By that order 160 acres were subdivided into 55 small tracts, the great majority of them containing 2.5 acres, and 42 of which were covered by applications from persons entitled to preference or priority under the regulation 43 CFR 257.5(a). Mr. Lee is one of those entitled to the priority provided he conforms his application "to the area, classification and dimensions of the tract as specified in the classification order" and tenders the fair market value of the land.

The area in which Mr. Lee is interested was divided into 5 small tracts identified in the classification order by reference numbers 10, 11, 12, 13, and 14. Tract 10 was assigned to Mr. Lee in the decision from which this appeal is taken. By decisions of May 16, 17, and 28, respectively, the Manager assigned tract 11 to Mr. James R. Durkee, tract 13 to Mr. James F. Allen and tract 14 to Mr. Charles Allen Taylor. Tract 12 was left open to sealed bidding. Durkee, Allen and Taylor each made individual applications Sacramento 051215, 051707 and 051218 for small tracts in the same area prior to March 11, 1957, though subsequent to Mr. Lee's application, and are, with him, entitled to the priority recognized under 43 CFR 257.5(a).

Where two or more small tract applicants are entitled to the priority of the regulation, the first applicant is entitled to first consideration. Where the tract applied for by such applicant is classified into two or more small tracts, he is entitled to that tract which conforms most closely to his application and his proposed use. In this instance tracts 10, 11, 12, 13, and 14 appear to conform in position, but not in characteristics, equally with Mr. Lee's original application, and in all fairness to him as the first applicant, since he cannot obtain the 5 acre tract for which he originally applied, Mr. Lee's application should be conformed to that small tract which is most suitable for the desired use, a residence site.

It cannot be determined from the record to which of the tracts Mr. Lee's application should be conformed, but it would appear from his appeal that tract 10 may be less desirable for residence purposes because of the difficulty of obtaining access and that perhaps he is entitled to one of the other tracts if he will agree to conform his application accordingly.

Without passing upon the matter, the cases, will be remanded after this decision becomes final with instructions that a determination be made by the local officials of the Bureau as to which is the most suitable of the tracts for residence purposes that conform equally with Mr. Lee's original application. Upon this determination Mr. Lee is to be given a reasonable time in which to conform his application to the selected tract and to pay its fair value as required by the regulations failing in which his application will be rejected. Should it appear upon a determination of the tract most suitable for residence purposes that Mr. Lee is entitled to a tract other than tract 10, and that this would require a reassignment of one or more of the remaining tracts, then such further reassignment of those tracts should be made as would be required in order to give each of the other applicants the most suitable of the remaining tracts in terms of proposed use that most closely conforms to his original application, in accordance with his priority of filing.

The Manager's decisions of May 16, 17, and 28, 1957 are reversed and the cases will be remanded for action in accordance with the views expressed in the decision after this decision becomes final.

Mr. Lee, Mr. Durkee, Mr. Allen and Mr. Taylor are each of them allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by $5.00 filing fee for each separate application on which the appellant is seeking favorable action. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950, as amended by Circular No. 1962. See Information Sheet attached.

If an appeal is taken by any one of the above named parties, then he must serve a copy of all documents on the other parties whose addresses are as follows: Mr. Lee, 1214½ K Street, Sacramento 14, California; Mr. Durkee, P.O. Box 892, Project City, California; Mr. Allen, 928 MacArthur Boulevard, San Leandro, California; Mr. Taylor, P.O. Box 42, Summit City, California; within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

Attachment

DISTRIBUTION:

Mr. Russell Stewart Lee (Certified Mail)
Mr. James R. Durkee (Certified Mail)
Mr. James F. Allen (Certified Mail)
Mr. Charles A. Taylor (Certified Mail)
Lands Staff Officer
Appeals List No. 1
CCS

DEPT OF INTERIOR
SACRAMENTO, CAL.
MAY 1 2 07 PM 1958
BUREAU OF
LAND MANAGEMENT

In reply refer to:

Los Angeles 066453
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 2, 1958

Certified Mail
Return Receipt Requested

DECISION

	:	
Ralph L. Kirsch, Jr.	:	Small Tract
	:	Renewal Application
	:	

Manager's Decision Affirmed

Ralph L. Kirsch, Jr., has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office at Los Angeles, California, dated January 6, 1956, rejecting his application for a second renewal of appellant's small tract lease on certain land in California which was issued under provisions of the Small Tract Act of June 1, 1938 (52 Stat. 609, as amended, 43 U.S.C., sec. 682a). The application was rejected for failure to comply with the terms of the lease as the required improvements were insufficient to justify further renewal.

On January 9, 1950, Mr. Kirsch was issued a small tract lease with purchase option, Los Angeles 066453, for a five-year term to be used for cabin site purposes only. Appellant subsequently filed an application for renewal on December 23, 1954, wherein he stated the following improvements had been made on the land:

> "Cleared and semi-graded road to cabin site.
> Built lumber forms for concrete foundation of cabin.
> Temporarily ceased improvement upon changing my residence to Tuolumne County in Northern California."

The appellant was granted a one-year renewal of the lease, effective January 9, 1955.* Appellant was residing at this time in Covina, California, which is reasonably near the small tract.

---

*The appellant was not required under section 2 of the initial lease to construct any improvements in order to obtain this renewal. Gilbert V. Levin, 64 I.D. 1, 5 (1957).

An application for a second renewal of the lease was submitted on January 5, 1956. It stated in applicable portion:

> "The lessee has fully complied with all the terms and conditions of the lease and the regulations under which it was issued except for final completion of cabin and has constructed the following improvements on the land: Cleared and semi-graded road to cabin site. Built wood forms for concrete foundation of cabin."

The second renewal application was timely filed and on the proper forms. Under the lease terms in effect when appellant's second lease was issued, January 9, 1955, it was required that an offer to renew be filed not more than six months nor less than 60 days prior to the expiration thereof. However, under 43 CFR 257.15, Circular No. 1899, 20 F.R. 366 (January 15, 1955), effective March 11, 1955, it is required that proper application to renew be filed prior to the expiration of the lease. The Department has held that where changes in regulations relieve a lessee of obligations or extend him a benefit and are not detrimental to the interest of the United States, such a benefit might well be extended to a lessee even though his lease did not incorporate future regulations. Henry Offe, 64 I.D. 52 (1957).

On appeal the applicant refers again to the improvements constructed during the initial five-year lease. He further maintains that during the first five-year lease he was transferred 600 miles from Covina, California. Appellant further asserts that "during the second year's lease renewal /undoubtedly meaning the first renewal/ I purchased material pre-cut the cabin but due to financial difficulties and lack of time I was unable to transport materials to cabin site and erect the cabin."

The renewal lease, pursuant to 43 CFR, 1955 Supp., 257.15(c), provided for renewal only upon a showing satisfactory to the lessor that failure to apply for the purchase of the tract is justified and that nonrenewal would work an extreme hardship on the lessee.

It has been held that a transfer of 2500-3000 miles from the small tract is not justification for nonimprovement; Ernest J. Van Loon, A-27087 (April 12, 1955), nor is employment 120 miles from lessee's residence justification. Charles R. Smith, Nevada 08776 (May 9, 1957). Distance alone would not be justification for failure to apply for purchase of the tract.

The construction of the improvements was necessary before lessee could meet the requirements of sale of the tract. By the terms of his original lease of five years appellant was authorized to construct improvements. Appellant was granted an additional year to make improvements on the tract. He purchased some materials and pre-cut them. However, purchase of materials, without showing cost and relationship to the asserted financial difficulties, coupled with the inability to transport the materials to the cabin site because of lack of time where the site is located within less than approximately 60 miles of appellant's residence and readily accessible is not justification for no improvements during the term of the renewed lease. Where an applicant has been put on notice as to improvements necessary to comply with terms of a lease, at least some further substantial physical improvement of the tract is a condition precedent to further consideration of renewal of the lease. It does not appear that any reasons offered by appellant would justify his failure to construct the required improvements during the term of the renewed lease and warrant further renewal.

The regulation quoted above further required that the applicant establish that "nonrenewal of the lease would work an extreme hardship on the lessee." Even if appellant had shown his lack of time and financial difficulty were justification for failing to construct improvements, he would have the further burden of satisfactorily showing extreme hardship precedent to renewal of a lease. *Ernest J. Van Loon*, *supra*; *Evelyn Adams Lyon*, A-27245 (December 28, 1955). The evidence submitted by Mr. Kirsch is not sufficient to meet the requirement.

Accordingly, the Manager's decision is affirmed.

Mr. Kirsch is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the *Director, Bureau of Land Management, Washington 25, D.C.*, in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. The appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the *Secretary of the Interior, Washington 25, D. C.*, in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

A.H.

Attachment

DISTRIBUTION:
Mr. Ralph L. Kirsch, Jr. (Certified Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

33950

In reply refer to:

Los Angeles 090981
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 2, 1958

DECISION

Evalena M. Johns) :) Small Tract

Manager's Decision Reversed

Mrs. Evalena M. Johns has appealed to the Director of the Bureau of Land Management from a decision of the Manager of the Los Angeles Land Office rejecting her application to purchase the small tract which had been leased to her on the ground that her application was filed after the expiration of the lease.

Since the time of the issuance of the Manager's decision, it has been held by the Department that the regulations governing applications to purchase land held under small tract leases (43 CFR, 1956 Supp., 257.13) are only directory as to the time when an application to purchase is to be filed, and that, if satisfactory improvements have been placed upon the land, and no intervening rights have attached, applications filed within a reasonable time after the expiration of the lease may be allowed. Albert H. Dobry, George H. Borovay, 64 I. D. 116, 122 (1957).

The record reveals that Mrs. Johns has made substantial progress toward the completion of a suitable cabin on her tract. However, her application to purchase was filed 120 days after the expiration of the lease. In the Dobry case, supra, 25 days was considered not unreasonably late, and it was noted that an application to purchase filed 62 days late had been allowed by the Department. A 120 day delay does not appear to exceed the bounds of reason.

In view of the substantial investment which she has made in the land and her substantial compliance with the terms of the lease, the application to purchase may be allowed, in the absence of intervening rights.

The decision of the Manager is accordingly reversed, and the case remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles for appropriate action consistent with this decision.

For the Director:

G.H.

DISTRIBUTION:

Ass't. to SS(Los Angeles) w/case file L.A. 090981
Mrs. Evalena M. Johns (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:

Los Angeles 0102013
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 4, 1958

Certified Mail
Return Receipt Requested

DECISION

Chester A. Werncke) :) Small Tract

Manager's Decision Affirmed

Mr. Chester A. Werncke has appealed to the Director of the Bureau of Land Management from a decision of the Manager, Land Office, Los Angeles, California, dated April 19, 1956, rejecting his application for the renewal of his small tract lease, on the ground that it was not timely filed.

Mr. Werncke's lease was issued on April 2, 1953, for a period of three years. His application for renewal was filed on April 19, 1956, eighteen days after the expiration of the lease. The regulation governing the renewal of a small tract lease, 43 CFR, 1956 Supp., 257.15(a) states that "an application for renewal of a lease must be filed * * * prior to the expiration of the lease." The clear language of this regulation requires the rejection of the application for renewal. Cf. Minta Harper Dozier, A-27221 (November 17, 1955).

Where an application is timely filed, but the required improvements have not been erected, a renewal may be allowed where the failure to erect improvements is justified, and the applicant shows that nonrenewal would work an extreme hardship. Henry Offe, 64 I.D. 52 (1957). That situation does not exist here. The applicant has placed on the land only a cement slab, of a value not in excess of $200.00. After his lease was issued, the applicant left California, and now lives and works in Kentucky. Voluntarily leaving the vicinity of the small tract is not a justification for failing to construct the required improvements within the term of the small tract lease. Mr. Werncke has not alleged that the failure to renew the lease will result in extreme hardship to him, and the relatively small investment which he has so far made in the land, coupled with its great distance from the place where he now resides, permits the conclusion that extreme hardship will not result from the refusal to renew the lease.

The decision of the Manager is therefore affirmed.

The appellant is granted 90 days from service of notice within which to remove his improvements from the land or to make other disposition thereof. If the improvements are disposed of to a person other than a subsequent lessee they must be removed from the land within the 90-day period, otherwise the improvements will become the property of the United States.

Mr. Werncke is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. An appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

G.H. Dunn

Attachment

DISTRIBUTION:

Mr. Chester A. Werncke (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:

Los Angeles 0122654
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 8, 1958

Certified Mail
Return Receipt Requested

DECISION

Alfred Gene Cagle : Small Tract

Manager's Decision Affirmed

Alfred Gene Cagle has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated December 16, 1955, rejecting his application for a lease under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., sec. 682a). The application was rejected because a small tract lease for the tract had already been issued to one Alyce J. Dunphy, Los Angeles 073397.

The appellant asserts that an employee of the Bureau had advised him that the tract was available for a small tract lease at the time he filed his application.

Miss Dunphy was issued a small tract lease on January 6, 1949 for a period of five years embracing the land in issue. A renewal lease expiring on January 5, 1955 was issued to her. The appellant filed his application on December 3, 1954 while Miss Dunphy's lease was still in force. On December 29, 1954, Miss Dunphy filed an application to purchase the land showing that she had complied with the terms of her lease, and on July 16, 1956 patent No. 1161649 issued to her.

Since appellant's application was filed while the land was covered by an existing lease, the application was properly rejected. An outstanding entry on public land is an absolute bar to the filing of other applications for the same land until such time as the outstanding entry is canceled or relinquished and that fact is noted in the Land Office records. Cf. 43 CFR, 1956 Supp. 257.18. E. A. Vaughey, 63 I.D. 85, 87 (1956). Moreover, the Department does not have jurisdiction to inquire into and determine the rights of one claiming adversely to a patentee, after the patent has issued. Everett Elvin Tibbetts, 61 I.D. 397 (1954). Legal title to the land has been transferred from the United States by issuance of patent.

Reliance by a private person on information furnished to him by an employee of the Bureau cannot operate to vest in such a person any right which is not authorized by law. Charles L. Day, A-26233 (August 31, 1951). If a Bureau employee did misinform the appellant, he did not thereby acquire any rights to the land.

Accordingly, the decision of the Manager is affirmed.

Mr. Alfred Gene Cagle is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:

Hon. Cecil R. King
Mr. Alfred Gene Cagle (Certified Mail)
Miss Alyce J. Dunphy (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

33950

In reply refer to:

Los Angeles 092915
099545
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 9, 1958

Certified Mail
Return Receipt Requested

DECISION

Florence M. Thorpe :
Jewell Vivian Spence : Small Tract

Manager's Decisions Affirmed

Florence M. Thorpe and Jewell Vivian Spence have appealed to the Director of the Bureau of Land Management from decisions of the Manager of the Los Angeles Land Office rejecting their applications to purchase the small tracts which had been leased to them on the ground that the regulations require applications to be filed before the expiration of the leases.

Since the time of the issuance of the Manager's decisions, it has been held by the Department that the regulations governing applications to purchase land held under small tract leases (43 CFR, 1956 Supp., 257.13) are only directory as to the time when an application to purchase is to be filed, and that, if no intervening rights attached, applications filed within a reasonable time after the expiration of the leases may be considered. Albert H. Dobry, George H. Borovay, 64 I.D. 116, 122 (1957).

Considering the applications to purchase on their merits, it appears that the improvements erected by the appellants are insufficient to constitute substantial compliance with the terms of their leases. Mrs. Thorpe has placed a 12 by 14 cabin on the land. The carpentry is rough and the building unpainted. The door and window framing is incomplete, and rusty sheet iron has been nailed over the windows.

Mrs. Spence has moved a 50 year old cabin onto the tract. The windows are broken out, and the door is hanging on one hinge. A converted box car has been connected to the old house, and has been partitioned into two rooms.

Under the terms of the lease, the appellants agreed to construct upon the lands substantial improvements appropriate for the use for which the leases were issued. The structures placed upon the land by the appellants do not meet Bureau of Land Management standards, and are not comparable to existing improvements in the vicinity. In view of the makeshift nature of the improvements, the applications to purchase were properly rejected. Minta Harper Dozier, A-27221 (November 17, 1955).

The decisions of the Manager are affirmed.

The appellants are allowed 90 days from service of notice within which to remove their improvements, otherwise the improvements will become the property of the United States.

Mrs. Thorpe and Mrs. Spence are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Furr.

Enclosure

DISTRIBUTION:

Mrs. Florence M. Thorpe (Certified Mail)
Mrs. Jewell Vivian Spence (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:

Los Angeles 0104850
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 10, 1958

DECISION

Virginia Lorrayne Wilson	:	Small Tract
	:	
	:	

Manager's Decision Reversed, Case Remanded

Virginia Lorrayne Wilson has appealed to the Director, Bureau of Land Management, from the decision of the Manager, Land Office, Los Angeles, California, dated July 31, 1956, rejecting her application to renew a lease under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a) because the renewal application was filed three days after the lease had expired.

A small tract lease was issued to the appellant on June 24, 1953 for a period of three years, so the lease expired on June 23, 1956. On June 26, 1956 appellant filed an application to renew her lease, and in the application she described the permanent improvements that she had placed on the tract. No intervening rights have attached to the land.

The appellant has submitted evidence indicating that she has completed the construction of a cabin upon the tract,

The application form filed by the appellant may be considered as either a renewal application or an application to purchase. In the circumstances, the objectives of the Small Tract Act can be more fully met if the application is considered as a purchase application.

The Department regulation, 43 CFR 257.13 governing the filing of applications to purchase has been construed as not mandatory, but only directory, as to the time when an application to purchase may be filed, and, where there are no intervening rights, such an application filed within a reasonable time after the expiration of the lease may be considered favorably. Albert H. Dobry, George H. Borovay, 64 I.D. 116 (1957).

In the circumstances, I find that a three day delay in the filing of the appellant's application to purchase is not an unreasonable delay in time. Lois E. Wilkins, Los Angeles 081435 et al., (January 22, 1958)

Accordingly the decision of the Manager is reversed, and the case is remanded to the Manager, through the Bureau's Assistant to the State Supervisor at Los Angeles, for further action consistent with this decision.

For the Director:

DISTRIBUTION:

Mrs. Virginia Lorrayne Wilson (Regular Mail)
Assist. to SS (Los Angeles with case file LA 0104850)
Land Staff Officer
Appeal List No. 1
JHO'D

33950

In reply refer to:

Los Angeles 0104850
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 10, 1958

DECISION

Virginia Lorrayne Wilson	:	Small Tract
	:	
	:	

Manager's Decision Reversed,
Case Remanded

Virginia Lorrayne Wilson has appealed to the Director, Bureau of Land Management, from the decision of the Manager, Land Office, Los Angeles, California, dated July 31, 1956, rejecting her application to renew a lease under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a) because the renewal application was filed three days after the lease had expired.

A small tract lease was issued to the appellant on June 24, 1953 for a period of three years, so the lease expired on June 23, 1956. On June 26, 1956 appellant filed an application to renew her lease, and in the application she described the permanent improvements that she had placed on the tract. No intervening rights have attached to the land.

The appellant has submitted evidence indicating that she has completed the construction of a cabin upon the tract,

The application form filed by the appellant may be considered as either a renewal application or an application to purchase. In the circumstances, the objectives of the Small Tract Act can be more fully met if the application is considered as a purchase application.

The Department regulation, 43 CFR 257.13 governing the filing of applications to purchase has been construed as not mandatory, but only directory, as to the time when an application to purchase may be filed, and, where there are no intervening rights, such an application filed within a reasonable time after the expiration of the lease may be considered favorably. Albert H. Dobry, George H. Borovay, 64 I.D. 116 (1957).

In the circumstances, I find that a three day delay in the filing of the appellant's application to purchase is not an unreasonable delay in time. Lois E. Wilkins, Los Angeles 081435 et al., (January 22, 1958)

Accordingly the decision of the Manager is reversed, and the case is remanded to the Manager, through the Bureau's Assistant to the State Supervisor at Los Angeles, for further action consistent with this decision.

For the Director:

G. H. [illegible]

DISTRIBUTION:

Mrs. Virginia Lorrayne Wilson (Regular Mail)
Assist. to SS (Los Angeles with case file LA 0104850)
Land Staff Officer
Appeal List No. 1
JHO'D

In reply refer to:

Los Angeles 0102796
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 14, 1958

DECISION

Vincent Patrick Stroud	) :) :)	Small Tract

Action of Manager Reversed; Case Remanded

Vincent Patrick Stroud has appealed to the Director, Bureau of Land Management, from the action of the Manager, Land Office, Los Angeles, California, dated June 27, 1956, indicating that the appellant's application to purchase or renew a lease under the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a) would be rejected if filed * because of the expiration of the lease on May 22, 1956.

A small tract lease was issued to the appellant for a period of three years on May 22, 1953, which expired on May 22, 1956. On June 14, 1956, the appellant's application to purchase was received in the Land Office, indicating that at a cost of $1,100.00 a suitable cabin had been substantially completed on the tract. No intervening rights have attached to the land.

The departmental regulation, 43 CFR, 1956 Supp., 257.13, governing the filing of applications to purchase small tract leases containing an option to purchase is not mandatory, but only directory, as to the time when an application to purchase must be filed. It has been held that a lessee may file his application to purchase within a reasonable time after the expiration of the lease terms, absent intervening rights. Albert H. Dobry, George H. Borovay, 64 I. D. 116 (1957). In the circumstances, I find that a twenty-three day delay in the filing of the application to purchase is not an unreasonable delay in time. Accordingly, the action of the Manager is reversed, and the case is remanded to the Manager, through the Bureau's Assistant to the State

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* The appellant had, however, filed a purchase application on June 14, 1956. Both the Manager and the appellant treated the June 27, 1956 letter as a rejection of the purchase application and it is being considered here in that light.

Supervisor at Los Angeles, for further action looking to the processing of the application to purchase in accordance with the views expressed in this decision.

For the Director:

DISTRIBUTION:

Mr. Vincent Patrick Stroud (Regular Mail)
Ass't. to SS(Los Angeles) w/case file LA-0102796.
Lands Staff Officer
Appeals List No. 1
JHO

33950

In reply refer to:

Los Angeles 0138505
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 16, 1958

Certified Mail
Return Receipt Requested

DECISION

Mrs. Lena B. Taylor : Small Tract

Decision of Manager Affirmed

Mrs. Lena B. Taylor has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office at Los Angeles, California, dated April 9, 1957, rejecting an application for renewal of a small tract lease on certain land, which lease was issued under the provisions of the Small Tract Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., 682a). The application was rejected because the appellant's reasons for failure to complete the required improvements on the land were considered insufficient to justify a renewal.

The record discloses that small tract lease Los Angeles 0138505 was issued to Mrs. Taylor on April 1, 1956, for a one-year term. Mrs. Taylor agreed under the terms of the lease to construct upon the land substantial improvements appropriate for the use for which the lease was issued. The lease terms provide that application for renewal may be made at any time prior to the expiration of the lease and stated that a renewal may be granted upon a showing by the lessee to the satisfaction of the Bureau that failure to construct improvements is justified and that nonrenewal would work an extreme hardship on the lessee.

The Manager rejected the application for renewal since it indicated that no valuable and permanent improvements had been placed on the tract and the reasons offered for noncompliance with terms of the lease were not considered sufficient to justify further renewal. A timely appeal from this rejection was filed by Mrs. Taylor.

The appellant states that she understood that she had a right to have the lease renewed each year for three years, and that she was required to have the improvements completed before the end of the third year. Mrs. Taylor asserts she intended to improve the tract within three years from the date the lease was issued. The appellant was ill and not working part of the year.

Conceding the material assertions of the appellant to be true, Mrs. Taylor has not shown that nonimprovement was justified. The lease terms are clearly recited in the instrument, and the appellant even quoted the pertinent paragraph as to improvements in her application for a renewal. Even though Mrs. Taylor was ill and not working part of the year, she had time to begin some substantial improvement on the land during the lease year. Common business prudence would have contemplated prompt compliance with the terms of her lease. The Department has held that a small tract lessee who has failed to comply with the requirements of the lease that substantial improvements be placed on leased lands, is not entitled to a renewal of the lease. Cf. Minta Harper Dozier, A-27221 (November 17, 1955).

The record indicates that the appellant has not expended any time or money with a view to the development of the tract. She is at liberty to make application for another small tract. Mrs. Taylor has not shown that failure to construct the required improvements on the small tract was justified and that failure to renew the lease would work an extreme hardship on her. Accordingly, the decision of the Manager is affirmed.

Mrs. Taylor is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A.H. Dunn

Enclosure

DISTRIBUTION:

Mrs. Lena B. Taylor (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JHO

In reply refer to:

Los Angeles 081889, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 16, 1958

DECISION

Flossie C. Michael, et al.) :) Small Tract

Manager's Decisions Reversed

Mrs. Flossie C. Michael and three others have appealed from decisions of the Manager, Land Office, Los Angeles, California, rejecting their applications to purchase the small tracts which had been leased to them on the ground that the applications were filed after the expiration of the leases.

Since the time of the issuance of the Manager's decisions, it has been held by the Department that the regulations governing applications to purchase land held under small tract leases (43 CFR, 1956 Supp., 257.13) are only directory as to the time when an application to purchase is to be filed, and that, if no intervening rights have attached, applications filed within a reasonable time after the expiration of the lease may be considered on their merits. Albert H. Dobry, George H. Borovay, 64 I. D. 116, 122 (1957). In the instant cases, the applications to purchase were filed within 20 days of the date they were required to be filed. In the Dobry case, 25 days were considered not so unreasonably late a filing as to warrant the rejection of the applications. The applications are therefore entitled to consideration.

Since all the appellants have substantially complied with the improvement requirements of their leases, it follows that their applications to purchase should be allowed. The cases are therefore remanded to the Manager of the Land Office, through the Bureau's Assistant to the State Supervisor at Los Angeles, for the issuance of final certificates, if all else be regular.

For the Director:

A. H. Dorr

(Distribution - Page 2)

DISTRIBUTION:

Each Appellant listed in Appendix "A", attached (Regular Mail)

Lands Staff Officer

Appeals List No. 1

Ass't. to SS (Los Angeles) w/case files LA-081889, 086323, 086889, 093600

MG

APPENDIX "A"

	Name	Date Lease Expired	Date of Application to Purchase
LA-081889	Mrs. Flossie C. Michael 915 Wynnwood Lane Houston, Texas (Her attorney: Mr. Harvey M. Parker Rinehart, Merriam, Parker & Berg Attorneys at Law 723 Security Building Pasadena, California).	April 6, 1956	April 12, 1956
LA-086323	Mr. William Harry Hutchens- 948 Elizabeth Street Barstow, California	April 5, 1956	April 26, 1956
LA-086889	Mr. Addison C. Funk 14808 Cohasset Street Van Nuys, California	May 3, 1956	May 11, 1956
LA-093600	Mr. Joe Geraci 6601 Bissel Street Huntington Park, California	March 26, 1956	April 9, 1956

33950

In reply refer to:

Los Angeles 086150
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 16, 1958

DECISION

Rudolf James Geisler : Small Tract

Manager's Decision Vacated
Case Remanded

Rudolf James Geisler has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Los Angeles, California, dated April 13, 1956, which held for cancellation his lease issued under the provisions of the Small Tract Act of June 1, 1938, as amended (43 U.S.C., sec. 682a). The lease, which had been extended for a one-year term, was cancelled because a renewal lease was not authorized.

The appellant states that he has acted in good faith, that he has expended a substantial amount of money in order to make the improvements required by the lease terms, and has otherwise complied with the lease terms and the regulations. He states that cancellation of his lease will work an undue hardship on him.

A three-year small tract lease, effective April 2, 1951, was issued to the appellant. It expired on April 1, 1954. On April 2, 1954, there was received in the Land Office a letter dated March 31, 1954, requesting a one-year extension of the lease. Formal application for renewal was made on May 3, 1954. On June 3, 1954, Mr. Geisler was informed that a one-year renewal of his lease had been granted. The renewal was effective as of April 2, 1954, and was due to expire on April 1, 1955. On December 20, 1954, the appellant made application to purchase the tract. In rendering his decision, the Manager ruled that Geisler's original lease had expired on April 2, 1954, and that the renewal was not authorized and of no effect. He cancelled the renewal lease as of its effective date, April 2, 1954.

The renewal lease, as issued, was due to expire on April 1, 1955. The Manager did not render his decision until April 13, 1956. Since the renewal had expired by its own terms, there was no lease in existence capable of being cancelled. The decision was, therefore, a nullity and is hereby vacated.

Although the Manager issued the renewal lease pursuant to an application which was not timely filed under the terms of the original lease, that renewal was not ipso facto null and void and should be recognized as in force and effect on December 20, 1954, when the purchase application was filed. Cf. Paul R. Brown, A-26923 (August 26, 1954); L. N. Hagood, A-26226 (October 5, 1951); Bud E. Burnaugh, A-27356 (September 4, 1956); Hjalmer A. Jacobson et al., 61 I. D. 116, 118 (1953). The cited departmental precedents have established that where a competent official who has jurisdiction over the subject matter issues a lease, its existence must be recognized even though it was issued in violation of law. It was pointed out in the Jacobson case, supra, that the rule is otherwise where some explicit provision of law makes the official's action void or where he lacks jurisdiction over the subject matter.

In the instant appeal the renewal lease was issued by a competent official who had jurisdiction to issue a small tract lease upon the land and consequently this renewal lease cannot be considered to have been null and void from its inception. Its existence should be recognized.

Since there is no prior lease application for the land now of record, the appellant's application to purchase, filed during the renewal term of his lease should also be recognized.

Accordingly, the appellant's application to purchase having been timely filed, the case is remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles, for further processing of the appellant's purchase application.

For the Director:

G. H. [illegible]

DISTRIBUTION:

Ass't. to State Supervisor, Los Angeles--w/case records LA-086150 and LA-0113417.
Mr. Lucien A. Sauvage, Attorney for Appellant (Regular Mail)
Mr. Rudolf James Geisler (Regular Mail)
Hon. Cecil R. King, Member of Congress
Hon. Joe Holt, Member of Congress
Lands Staff Officer
Appeals List No. 1
BF

33950

appeal to Sec
affirmed A-27782-12-19-58

In reply refer to:
Los Angeles 0119968, et al.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 21, 1958

Certified Mail
Return Receipt Requested

DECISION

Joseph Argento et al.1/ : Small Tract Applications

Decision of the Manager Affirmed

Joseph Argento and sixteen other individuals have appealed to the Director, Bureau of Land Management from decisions of the Land Office Manager, Los Angeles, California of June 1, 1956, and subsequent dates which rejected their small tract applications for tracts located within the SW¼ Sec. 34, T. 10 N., R. 12 W., S.B.M., California. The applications were filed pursuant to the Act of June 1, 1938 (43 U.S.C., 1952 ed., 682a). They were rejected because the land sought is within the desert land entry Los Angeles 0103831 of Harold Pine, which entry was allowed on November 23, 1954.

The appellants contend that the land included in the desert land entry is better suited for small tract purposes and furthermore that it is in the public interest that the land be devoted to the use of 32 families as homesites rather than to the use of one person for agricultural purposes. Therefore, they request a reversal of the desert land classification and ask that their small tract applications be reinstated. They also contend that a desert land entry cannot be allowed where the entryman intends to use percolating water to reclaim the land. The appellants allege further that the entryman has not made sufficient improvements on the land to meet the requirements of the Desert Land Act and the Departmental regulations for the submission of annual proof on the entry.

The appellants have also submitted individual statements of reasons with their appeals contending that the land is better suited for homesite use under the Small Tract Act than for agricultural use under the Desert Land Act.

1/ Appendix A contains the names of appellants and land office serial numbers involved in the 17 appeals.

As previously indicated, the record shows that desert land entry Los Angeles 0103831 was allowed on November 23, 1954. Land segregated from the public domain by patent, reservation, entry, selection, or otherwise, is not subject to settlement or any other form of appropriation until its restoration to the public domain is noted upon the land office records. Martin Judge, 49 LD 171 (1922). Accordingly, the SW$\frac{1}{4}$ Sec. 34, T. 10 N., R. 12 W., S.B.M., California was not subject to entry under the Small Tract Act, 43 U.S.C., 682a, after November 23, 1954. Therefore, the 15 small tract applications filed after that date were properly rejected. Cf. Lula T. Pressey, 60 I.D. 101 (1947).

The small tract applications of the two remaining appellants, Joseph Argento, Los Angeles 0119968, and Loretta M. Testasecca, Los Angeles 0121046, were filed on September 17, 1954, and October 25, 1954, respectively. The land in question was classified as suitable for desert land entry pursuant to Mr. Pine's application under section 7 of the Taylor Grazing Act on December 28, 1953. Thus Mr. Pine had already acquired a statutory preference right of entry under section 7 of the Taylor Grazing Act (43 U.S.C., 1952 ed., 315f) at the time these two small tract applications were filed. The pertinent Departmental regulation issued pursuant to section 7 of the Taylor Grazing Act provides as follows:

> "Where public land is classified under section 7 of the Taylor Grazing Act pursuant to an application, the applicant is entitled to a preference right of entry. If, however, after classification of the land and prior to the allowance of the application, it should be necessary for any reason to reject the application, the land will not become subject to applications by persons other than the preference right applicant until an appropriate order of opening has been issued." 43 CFR 296.6

The proper administrative action would have been for the Manager to have rejected these two small tract applications at the time they were filed on the ground that the land had already been classified as suitable for desert land entry and the Manager should also have indicated at that time that Mr. Pine was entitled to a preference right of entry under that classification of the land.

There is nothing binding about a classification of land. It is subject to revocation at any time or to revision upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. Acting Solicitor's Opinion, M-36178 (Supp.) 61 I.D. 278 (1954). Neither does the classification of land under section 7 of the Taylor Grazing Act pursuant to an application confer any right in the land upon the applicant. It merely gives the applicant a preference right to enter the land if it is opened to entry as a result of his application. When the preference right application is allowed, however, rights have been initiated in the land. Acting Solicitor's Opinion, supra, 279-280. Thus, the contentions of the appellants that the land is better suited for small tract use than for desert land entry and should have been classified for small tract use cannot be considered at this late date.

The rejection of these two small tract applications must also be affirmed unless the desert land entry was allowed on November 28, 1954, in violation of the provisions of the Desert Land Act and the Departmental regulations issued pursuant thereto. Nothing in the record shows that the land was not suitable for desert land entry. The appellants contend that a desert land entry cannot be allowed where the entryman intends to use percolating water to reclaim the land. The right to appropriate water for the reclaiming of a desert land entry is a matter governed by State law and whether a desert land entry can be based upon percolating water depends upon whether the law of a particular state is subject to the doctrine of "prior appropriation" within the meaning of that term as it is used in the Desert Land Act. See Ruby E. Huffman et al., 64 I.D. 57, 60 (1957).

The Department has held that although California law is not clear as to the rights of the desert land entrymen to the use of percolating water underlying the entered land, there is sufficient support for the position that desert land entrymen do have appropriative rights under California law and that such rights satisfy the requirements of the Desert Land Act. Therefore, the Bureau could not hold that Mr. Pine's entry could not have been allowed as a matter of law because he planned to rely upon the use of percolating water for the reclamation of the land.

Joseph Argento and Loretta M. Testasecca have also filed identical individual briefs in which they quote a number of Departmental regulations issued pursuant to the Desert Land Act and conclude their briefs by stating that they do not believe that the entryman has complied with these regulations which relate to the submission of annual proof on an entry. These general assertions by the appellants are not corroborated by any data and, in any event, the consideration of these assertions is not involved in a proper disposition of these appeals.

Nothing having been presented in this appeal to show that the land in question was not suitable for desert land entry or that the disposition of the land under the Desert Land Act was otherwise unauthorized, the rejection of the small tract applications of Joseph Argento and Loretta M. Testasecca must also be affirmed.

Accordingly, the decisions of the Manager of June 1, 1956, rejecting these 17 small tract applications are affirmed.

Joseph Argento and the 16 other appellants listed in Appendix A are allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5 filing fee for each application on which favorable action is sought. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received therewithin 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Joseph Argento or any of the other appellants listed in Appendix A, he must serve a copy of all documents on the adverse party, Harold Pine, c/o Joe E. Hamer, Post Office Box 84, Rosamond, California within 15 days after filing the document, and must send proof of that service, as required by 43 CRR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C. in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

Attachment

DISTRIBUTION
Each Appellant (Certified Mail)
Harold Pine
Lands Staff Officer (1)
Appeals List No. 1
CFG

Appendix A

Name of Applicant	Date of Filing of Application	Los Angeles
Joseph Argento	September 17, 1954	0119968
Loretta Mary Testasecca	October 25, 1954	0121046
Metro Van Savage	January 24, 1955	0125003
Cecil A. West	January 24, 1955	0125004
Kenneth C. West	January 25, 1955	0125235
Andrea Watson	January 25, 1955	0125240
Grace M. Stage	January 27, 1955	0125359
Herbert Epple	January 28, 1955	0125471
Mabel S. Palmer	January 28, 1955	0125472
Eugene Epple	January 28, 1955	0125473
Robert E. Epple	January 28, 1955	0125474
Leslie Douglas Skelton	January 28, 1955	0125504
William W. Skelton	January 31, 1955	0125570
Zeta Carstens	January 31, 1955	0125813
Robert A. McIntosh	June 19, 1956	0142335
Dale Leonard Sackett	June 25, 1956	0142545
Eugene Richard Vassallo	July 12, 1956	0142869

Appendix A

Name of Applicant	Date of Filing of Application	Los Angeles
Joseph Argento	September 17, 1954	0119968
Loretta Mary Testasecca	October 25, 1954	0121046
Metro Van Savage	January 24, 1955	0125003
Cecil A. West	January 24, 1955	0125004
Kenneth C. West	January 25, 1955	0125235
Andrea Watson	January 25, 1955	0125240
Grace M. Stage	January 27, 1955	0125359
Herbert Epple	January 28, 1955	0125471
Mabel S. Palmer	January 28, 1955	0125472
Eugene Epple	January 28, 1955	0125473
Robert E. Epple	January 28, 1955	0125474
Leslie Douglas Skelton	January 28, 1955	0125504
William W. Skelton	January 31, 1955	0125570
Zeta Carstens	January 31, 1955	0125813
Robert A. McIntosh	June 19, 1956	0142335
Dale Leonard Sackett	June 25, 1956	0142545
Eugene Richard Vassallo	July 12, 1956	0142869

appeal to Sec
affirmed A-27741 12-18-58

In reply refer to:

Los Angeles 088808
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 24, 1958

Certified Mail
Return Receipt Requested

DECISION

Frank E. Hale : Small Tract
:
:

Manager's Decision Affirmed

Mr. Frank Edward Hale has appealed to the Director, of the Bureau of Land Management from the decision of the Manager of the Los Angeles Land Office, dated April 19, 1956, rejecting his application for the renewal of a small tract lease.

The lease was issued on April 28, 1950, for a term of five years, to Clyde Burk. By the terms of the lease, the land was to be used for homesite purposes only, and section 10 of the lease stipulated that "the lessee will not assign this lease, nor sublet any portion of the premises, without the prior approval of the Lessor and will not speculate in the privileges herein granted."

On July 8, 1950, Mr. Burk sold "any and all improvements" on the property to John Liska for two hundred dollars. On November 22, 1950, Mr. Liska sold the improvements to Herbert C. Carter for nine hundred dollars. On June 21, 1954, Mr. Carter sold the improvements to Mr. Hale, the appellant, for one thousand, two hundred dollars. All of those transactions occurred without the knowledge or approval of the Los Angeles Land Office.

After Mr. Hale purchased the improvements, he built on the land, at a cost of approximately one thousand, two hundred dollars, a stable for horses, and a tack room.

In January, 1955, Mr. Hale wrote to the Los Angeles Land Office, and expressed his interest in applying either for the renewal of the lease or the purchase of the tract. He was then informed that the assignment of a small tract lease may not be made without the approval of the Bureau, and that the assignment must be made on a certain form, requiring the signature of the original lessee. The present whereabouts of Mr. Burk is unknown, and no assignment of the lease from him to Mr. Hale has ever been prepared.

On April 29, 1955, Mr. Hale filed an application for the renewal of Mr. Burk's small tract. The application was rejected on the ground that Mr. Hale had no standing to apply for the renewal of the lease. It was also noted that the application for renewal was filed after the expiration of the lease. It is from this decision that Mr. Hale appeals. The appeal consists of a recital of the above facts, and a prayer for relief based upon the equities to which it is believed these facts give rise.

The appellant, however, in the absence of a properly executed assignment, has no lease upon which an application for renewal may be predicated. While the lease, renewal, or sale of lands under the provisions of the Small Tract act (43 U.S.C., 1952 ed., sec. 682a) is discretionary with the Secretary, it is clearly implied in the law that such lease, renewal or sale shall be made to the party who has properly qualified under the act and applicable regulations promulgated thereunder by the Secretary of the Interior. The regulations contain no provisions permitting a stranger to the lease to be considered as an applicant either for the renewal of the lease, or the patenting of the lands. The regulations do contain provisions which must be met before an assignment will be allowed, and no assignment will be recognized unless and until approved by the Bureau. (43 CFR 257.12). There has been no compliance with these regulations, and there has been, therefore, no assignment of the lease. Until the lease expired, Mr. Burk was the only lessee of record, and he alone could apply for the renewal of his lease. Mr. Hale's application was accordingly properly rejected. Cf. Earl C. Hartley et al. 65 I.D. 12 (1958)

Under the regulations in effect at the time of the expiration of Mr. Burk's lease, (April 27, 1955) the tract could not again be subject to further application until the issuance of an order specifying the time and manner in which the tract would be made available for lease c purchase. 43 CFR, 1956 Supp., 257.18(a). No such order has been issued. Thus, even if Mr. Hale's application for renewal were considered as a new and separate application for a small tract lease, it would have to be rejected, because the land is not open for small tract filing.

Furthermore, if Mr. Hale actually were the assignee of the lease, he would have had to comply with Section 4(b) of the lease, which requires the construction of "improvements appropriate for the use for which the lease is issued." The land was leased for homesite purposes only; Mr. Hale has constructed a stable, where he feeds and maintains horses. There is nothing in the record to indicate that Mr. Hale has built a dwelling on the land. The construction of a stable in an area where other small tract lessees have been required to build homes tellingly illustrates the reason and need for the Departmental regulations requiring all assignments to be made only upon the approval of the Land Office Manager.

The decision of the Manager is therefore affirmed.

When and if the land on which the improvements are located is disposed of to persons other than the appellant, Mr. Hale will be allowed a reasonable time within which to remove any improvements that can be removed without substantial damage to the land or the improvements, and the persons acquiring the land will be required, as a condition precedent to such acquisition, to reimburse the appellant for the reasonable value of all the permanent improvements which are left on the land and which are of value to the persons taking over the land. Lee Kisner et al., A-27189 (November 7, 1955).

Mr. Hale is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. An appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

For the Director:

a. H.

Attachment

DISTRIBUTION:

Mr. Frank E. Hale, (Certified Mail)
Lands Staff Officer
Appeal List No. 1½
MG

appeal to Sec
affirmed A-27725- 11-12-58

In reply refer to:
filed 049633 57 5.1
Sacramento 047808
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 24, 1958

Certified Mail
Return Receipt Requested

DECISION

Harold H. Beck	:	Small Tract

Manager's Decision Affirmed

Mr. Harold H. Beck has appealed to the Director of the Bureau of Land Management from the decision of the Manager of the Sadramento, California, Land Office, dated May 16, 1956, dismissing his protest against the issuance of a small tract lease to Mr. William Stroh, Jr.

The lease is for land which was originally classified as suitable for small tract development pursuant to an application filed by a Mr. George R. Prestidge, to whom a lease was issued on February 26, 1952. Mr. Prestidge's lease expired on February 25, 1955. On February 28, 1955, Mr. Stroh applied for the land.

Another application for the lease of this same tract was filed simultaneously with Mr. Stroh's. A drawing was held, as a result of which the land was awarded to Mr. Stroh, and the lease (Sacramento 049633) issued on March 16, 1955.

On May 18, 1953, Mr. Beck submitted to the Land Office a map depicting this general area, and had expressed an interest in acquiring the land marked in red on the map. On June 22, 1953, the Manager of the Land Office informed Mr. Beck that the legal description of the land marked in red was Tract 47, Section 37, T. 17 S., R. 29 E., M.D.M., California, and that the land appeared to be public domain, and could be applied for under the Small Tract Act. A comparison of the map submitted by Mr. Beck with the official plat of survey of the area reveals that the legal description of the land was correct.

On December 14, 1953, Mr. Beck filed a small tract application describing therein Tract 47 of Section 37 of the appropriate township. The application was accompanied by a map depicting in red the tract now leased to Mr. Stroh. Since the application on its face was clear and unambiguous that Tract 47 was sought, the description in the application necessarily was controlling. On March 11, 1955, this application was rejected, on the ground that the land is in the Sequoia National Park, and thus not subject to disposal under the public land laws.

On March 31, 1955, a letter was received in the Land Office on behalf of Mr. Beck stating that the application was in error, and that he had intended to apply for "a portion of the East half of the Southeast quarter and the East half of the Northeast quarter." This was later more specifically identified as the tract which had been leased to Mr. Stroh. When Mr. Beck was informed that the land had already been leased, he protested the issuance of the lease; the protest was dismissed, and it is from this dismissal that the appeal is taken.

Mr. Beck's contentions are that the lease should properly have been issued to him, as the prior applicant for the tract, and that it was in any event improper to issue the lease to Mr. Stroh, an employee of the National Park Service of the Department of the Interior.

Mr. Beck's statement that he is the first applicant for this particular tract is refuted by the record. Tract 47 of Section 37 was the land for which he applied in 1953, and Tract 47 of Section 37 was the land for which the application was rejected. This is land different from that entered by Mr. Stroh. Mr. Beck's first manifestation of interest in the parcel now leased to Mr. Stroh was on March 30, 1955, 14 days after the lease had issued. If Mr. Beck's letter of March 30 were considered an amended application, it, for purposes of priority, would date only from the time of its receipt in the Land Office - which was, of course, after the date of the issuance of the lease to Mr. Stroh.

If an application describes the wrong lands or lands not desired by the applicant, the essential requisite for the allowance of an entry is wanting. An application to enter, of necessity, is addressed to a specific tract, and to correct an error in that respect is, in effect, to make a new application. Annie Davies, 34 L.D. 539 (1906). It is well settled that an application for a small tract is properly rejected where a lease has already issued to a prior applicant. Roy H. Davis, A-27359 (August 15, 1956).

Furthermore, even if Mr. Beck had, in his application filed in 1953, correctly described the land for which he intended to apply, the application would then, also, have been rejected, and for the same reason - the existence, then, of an outstanding lease (that of Mr. Prestidge.)

In view of the facts in this case, the statement of the Land Office Manager in a letter to Mr. Beck that Tract 47 of Section 37 was public land, subject to disposal under the Small Tract Act, did not, by virtue of its being incorrect, result in an injury to Mr. Beck, since he was actually interested in, and intended to apply for, land other than that described in his application. But, if it be argued that reliance upon the information supplied by the Land Office was in any way detrimental to the rights of Mr. Beck, an adequate answer to such a charge is that the Land Office maintains plats of survey and tract books which are open to public inspection and from which proper descriptions and the current status of public lands may be ascertained. Reliance by a private person on information furnished to him by an employee of the Bureau cannot operate to vest in such a person any right not authorized by law. Charles L. Day, A-26233 (August 31, 1951). Since Mr. Beck did not apply for the tract he wanted before it was leased to another, he now has no claim to the land.

Mr. Beck's allegation of irregularity or connivance in the issuance of the lease to Mr. Stroh is not supported by the record. Mr. Stroh's entitlement to his lease was decided by a drawing, and, therefore, by the vagaries of chance.

It is also alleged that Mr. Stroh is unable to retain this lease because he is an employee of the National Park Service of the Department of the Interior. Although 43 CFR 7.3 prohibits the acquisition or retention by any employee of the Department of the Interior of any interests in lands administered by the Bureau of Land Management, exceptions are made for temporary, limited, or part time employees of agencies of the Department. At the time Mr. Stroh was awarded his lease, he was not employed by the Park Service; subsequently, he was employed for four months in 1955 (April 7 to August 8) as a truck driver, and for three months in 1957 as a carpenter. His temporary appointment was limited to December 31, 1957. Under the provisions of 43 CFR 7.4, a person temporarily employed in a situation such as this is not precluded from acquiring or retaining an interest in lands or resources administered by the Bureau of Land Management.

It is therefore concluded that the small tract lease properly issued to Mr. Stroh, who was qualified to accept it, and who is not disqualified from retaining it, and that Mr. Beck's protest against the issuance of this lease was properly dismissed. The decision of the Manager is affirmed.

Mr. Beck is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D.C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. An appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Mr. Beck, then he must serve a copy of all documents on the adverse party, William Stroh, Jr., Canyon Lodge, Three Rivers, California, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95, directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

Attachment

Acting Director

DISTRIBUTION:

Mr. Harold H. Beck (Certified Mail)
Mr. William Stroh, Jr. (Regular Mail)
Messrs. Gilmore & Gilmore (Regular Mail)
Superintendent, Sequoia and King's Canyon National Parks (Regular Mail)
Mr. E. T. Scoyen, National Park Service
Lands Staff Officer
Appeals List No. 1
MG

In reply refer to:

Los Angeles 0127307
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 28, 1958

Certified Mail
Return Receipt Requested

DECISION

Hugh D. McBride : Small Tract Application

Manager's Decision Reversed

Hugh D. McBride has appealed to the Director, Bureau of Land Management, from a decision of the Manager, Land Office, Los Angeles, California, dated March 22, 1956, rejecting his application filed under the provision of the Act of June 1, 1938, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 682a). The application, Los Angeles 0127307, was rejected for the stated reason that "this tract was not open to filing until February 16, 1955, lease to issue to Felice McBride whose application was timely filed."

The appellant was issued on February 15, 1950, a five-year small tract lease, Los Angeles 075928. The land embraced in this lease is the same tract as applied for by the appellant in Los Angeles 0127307. The lease, by its terms, expired on February 14, 1955. Under section 2 of the lease the lessee had a contractual preference right of renewal if he made application for renewal of the lease not more than 6 months nor less than 60 days prior to the expiration of the lease. *Gilbert V. Levin*, 64 I. D. 1 (1957). On January 10, 1955, the appellant wrote the Manager requesting a renewal of the lease. [1] Mr. McBride was informed that he should refile on the land he then held under lease. He was also informed that his present lease would expire on February 15, 1955, and that the tract would be again open to filing on February 16, 1955.

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[1] This letter was not a timely application for renewal of his lease as provided for by section 2 of the lease. Cf. *Ralph Louis Walker*, A-27425 (May 7, 1957).

The appellant filed a small tract application on February 15, 1955. At the date of the lease offer, land in terminated small tract leases was open to filing of applications for new leases (43 CFR, 1954 ed., 257.20(c)), without the necessity for an order opening the land as is required by 43 CFR, 1956 Supp., 257.18(a). Since the land was open to filing on February 15 and not on February 16 as indicated by the Manager, the application filed by the appellant was timely filed to warrant prior consideration under 43 CFR, 1954 ed., 257.20(c).

Felice McBride filed a lease offer on February 16, 1955, for the same tract. She was issued a three-year small tract lease, Los Angeles 0127440, effective February 1, 1957. The issuance of such a lease while an appeal is pending is contrary to administrative practice. When an application is rejected no disposition should be made of the land until the rejection becomes final. Cf. State of California et al., 64 I.D. 459 (1957). In the posture of this case, the lease to Felice McBride was issued while the appeal was pending.2/

Accordingly, the decision of the Manager is reversed and the lease of Felice McBride is canceled. When this decision becomes final the cases will be remanded to the Manager through the Assistant to the State Supervisor, Los Angeles, for action looking to the issuance of a small tract lease to Hugh D. McBride, if all else be regular, since we find that the prior offeror, Hugh D. McBride, is qualified to receive a lease. Cf. Sidney A. Martin, C. C. Thomas, 64 I.D. 81 (1957).

Felice McBride is allowed the right of appeal to the Secretary of the Interior. If appeal is taken, a Notice of Appeal must be sent directly to the Director, Bureau of Land Management, Washington 25, D. C., in time to be received there within 30 days after receipt by the appellant of this decision, and must be accompanied by a $5.00 filing fee. Each appeal must be supported by a Statement of Reasons which may accompany the Notice of Appeal. If a Statement of Reasons does not accompany the Notice of Appeal, then the Statement must be sent directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 30 days after the Notice of Appeal is received by the Director. Strict compliance must be made with the requirements of the rules of practice, 43 CFR, 1956 Supp., Part 221, contained in Circular No. 1950 as amended by Circular No. 1962. See Information Sheet attached.

If appeal is taken by Felice McBride then she must serve a copy of all documents on the adverse party, Hugh D. McBride, c/o Monolith Portland Midwest Company, 208 Tramway Building, 1100 Fourteenth Street, Denver 2, Colorado, within 15 days after filing the document, and must send proof of that service, as required by 43 CFR 221.34 and 221.95,

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2/ Moreover, the issuance of the lease to Felice McBride was in violation of 43 CFR, 1954 ed., 257.20(c) which provides that lease offers "*** will be processed in the order in which they are filed after the lands become subject to appropriation." That the issuance violated administrative practice does not afford a basis for canceling the lease. Cf. State of California et al. supra. The violation of the regulation, however, warrants such action. Cf. Minta Harper Dozier, A-27221 (November 17, 1955); Paul R. Brown, A-26923 (August 26, 1954); Antonia Zieglen, A-24537 (1947).

directly to the Secretary of the Interior, Washington 25, D. C., in time to be received there within 15 days after service, unless such proof accompanied the Notice of Appeal.

For the Director:

A. H. Dixon

Attachment

DISTRIBUTION:

Felice McBride (Certified Mail)
Hugh D. McBride (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

In reply refer to:

Sacramento 051678

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

April 28, 1958

Certified Mail
Return Receipt Requested

DECISION

John T. Logan : Small Tract Application

Appeal Dismissed

John T. Logan, by Mrs. Donie M. Logan as attorney in fact, 1/ has appealed to the Director, Bureau of Land Management, from a decision of the Manager of the Land Office, Sacramento, California, dated August 21, 1957, rejecting Mr. Logan's application, Sacramento 051678, filed pursuant to the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C., 1952 ed., sec. 682a), as amended.

The Manager's decision allowed a right of appeal to the Director of the Bureau of Land Management, and provided that in the event an appeal was filed full compliance was required with the provisions of 43 CFR 221.1 to 221.5, inclusive, and with other pertinent sections of the rules of practice. The pertinent rules were set forth in an information sheet attached to the decision.

Section 221.1 provides for an appeal by any party adversely affected by a decision of an officer of the Bureau of Land Management to the Director. Section 221.2 provides that a person who wishes to appeal to the Director must file in the office of the officer who made the decision a notice of appeal which must be received within 30 days after receipt of the adverse decision. Section 221.2 concludes as follows:

> "* * * The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make."

Section 221.3 of the rules of practice is as follows:

1/ There is no evidence in the record to indicate that the applicant gave Mrs. Logan such authority.

> "Statement of reasons; written arguments; briefs. If the notice of appeal did not include a statement of the reasons for the appeal, such a statement must be filed in the office of the Director within 30 days after the notice of appeal is filed. Failure to file the statement of reasons within the time required will subject the appeal to summary dismissal as provided in section 221.98. * * *"

Section 221.98 provides:

> "Summary dismissal. An appeal to the Director * * * will be subject to summary dismissal * * * for any of the following causes:
>
> (a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required; * * *"

The notice of appeal was filed in the Land Office at Sacramento on September 23, 1957. The notice stated in part "* * * Reasons for the appeal to follow in the prescribed time limit.* * *" The statement of reasons should have been filed not later than October 23, 1957, the thirtieth day after the notice of appeal was filed. No such statement of reasons for the appeal was filed within the time required, nor has it ever been filed, nor has a request been made for an extension of time within which to file the statement, as provided for by Section 221.97 of the rules of practice. The appeal is therefore dismissed.

John T. Logan is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. John T. Logan (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

In reply refer to:

Los Angeles 090422
090423
090424
5.04g

May 13, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Arnold Brounstein Jacob Brounstein Joseph Brounstein	Small Tract Applications

Manager's Decisions Affirmed

The above parties have appealed to the Director, Bureau of Land Management, from decisions of the Manager of the Land Office, Los Angeles, California, dated October 4, 1955, rejecting their applications for a renewal of their small tract leases. The applications for renewal were rejected for the stated reasons that no further valuable improvements had been placed on the tracts since the first renewal was granted and the showing in explanation of the failure in this regard was considered insufficient to justify further renewal of the leases.

In the appeal one of the appellants contends (Joseph Brounstein) that he is a construction electrician and that he was assigned to a job which forced him to work seven days a week; and that for this reason he had failed to finish the improvements on the tract. The appellant states that in addition to building his dwelling, he was also helping his father and brother with their buildings which adjoin his tract. The other two appellants contend that Joseph Brounstein, who was helping them, was unable to assist in the construction of the improvements; that they were forced to rely upon his building experience for the construction of the improvements on the tracts; and that he was supervising the construction and they were following his directions, since they have very little knowledge of construction work. The appellants request reconsideration of their applications for renewal of the leases.

The records show that the leases were issued to the appellants under the provisions of the Small Tract Act of June 1, 1938, as amended

(43 U.S.C., sec. 682a), on October 4 and 11, 1951, for three-year terms.* The lessees agreed under section 5(f) of the lease to construct a "family residence." Under item No. 1 of the Lease Terms it was provided that the lessee "may apply for a renewal of the lease * * * and, if it is determined that a new lease should be granted, he will be accorded a preference right to a new lease, for such term and upon such conditions as may be fixed." Timely applications for renewal of leases having been submitted by the lessees, and the record showing the lessees had started construction of the required improvements (concrete slab, floor, exterior wall frames, etc.), the Manager issued renewal leases of the tracts for one year. It was provided in the renewal lease that a further renewal thereof might be allowed "* * * upon a showing satisfactory to the lessor that the failure to apply for purchase of the tract is justified and that nonrenewal of the lease would work an extreme hardship on the lessee. * * *"

On October 3, 1955, the lessees filed applications for a second renewal of the leases and submitted photographs of the tract depicting the concrete slab, floor, exterior wall frames, etc., constructed thereon during the original lease term. A report of examination of the tracts states as follows:

> Arnold Brounstein, Los Angeles 090422 - "Improvements consisted of an 8' x 10' concrete slab and wall frames which have fallen down. It appears that no roof, siding, windows, or doors ever existed on the structure. There are no sanitary facilities."
>
> Jacob Brounstein, Los Angeles 090423 - "This improvement consisted of an 8' x 10' concrete slab with a frame plywood structure consisting of four walls and a roof. The eaves are open, there are no windows or doors, the structure is unpainted, and there are no sanitary facilities."
>
> Joseph Brounstein, Los Angeles 090424 - "This improvement consisted of an 8' x 10' concrete slab with a partially completed plywood structure. Half of one wall is missing, there is no roof, there are no windows and no doors, no sanitary facilities."

The appellants have failed to comply with the terms of the lease wherein they agreed to construct "a family residence." The appellants also have failed to show in what way a nonrenewal of the lease could work an extreme hardship upon them. In such case they are not

appeal to Sec

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* The parties did not have contractual rights of renewal under their initial and first renewal leases. Cf. Gilbert V. Levin, 64 I.D. 1 (1957).

entitled to a renewal. Cf. Henry Offe, 64 I.D. 52 (1957). In Cecil R. Vaughn, A-27477 (October 24, 1957), the Department stated that an application for renewal of a small tract lease is properly rejected where the lessee fails to show that his failure to apply for the purchase of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship upon him.

The reasons stated in the appeals are not a sufficient predicate, within the intent of the lease terms and the provisions of the applicable regulations upon which to conclude that the appellants' failure to meet the requirements for sale of the tracts was justified and that nonrenewal of the leases would work an extreme hardship upon them. The fact that Mr. Arnold and Mr. Jacob Brounstein were unable to finish the improvements because they were depending on Mr. Joseph Brounstein's help, and Mr. Joseph Brounstein's contention that he had no time to finish his improvements, would not justify their failure to construct improvements since there is no requirement that the lessees do the work themselves.

If the land is disposed of to persons other than the appellants, they should be allowed a reasonable time within which to remove any improvements that can be removed without substantial damage to the land or the improvements, and the persons acquiring the lands should be required as a condition precedent to such acquisition, to reimburse the appellants for the reasonable value of all the permanent improvements which are left on the land and which are of value to the persons taking over the land. Lee Kisner et al., A-27189 (November 7, 1955).

Accordingly, the decisions of the Manager are affirmed.

Messrs. Arnold Brounstein, Jacob Brounstein, and Joseph Brounstein are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Zinn

Enclosure

DISTRIBUTION:
Mr. Arnold Brounstein (Certified Mail)
Mr. Jacob Brounstein (Certified Mail)
Mr. Joseph Brounstein (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

35615

appeal to Sec
Dismissed A-27776 12-15-58

In reply refer to:
Sacramento 050009, etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 16, 1958

Appealed to Sec'y

Certified Mail
Return Receipt Requested

DECISION

Madeline Annie Albert et al. 1/ : Small Tract Applications

Decisions of the Manager Affirmed

Madeline Annie Albert and the other parties listed in Appendix "A" attached hereto have appealed to the Director, Bureau of Land Management, from decisions of the Manager of the Land Office, Sacramento, California, and decisions of the Manager, Los Angeles, California. The applications filed pursuant to the act of June 1, 1938, 43 U.S.C. sec. 682(a) were rejected either because they were considered too rough and inaccessible for small tract purposes, required or needed for game management purposes by the State of California, or because disposal would interfere with range livestock operations in the area, or a combination of the foregoing reasons.

As to the Lands in T. 25 S., R. 33 E. and secs. 10 and 11, T. 26 S., R. 33 E. appellants allege that (1) the lands are topographically suitable for cabins sites and that they are as good or better than other lands in the area that have been classified for small tract purposes as well as sites now occupied by many commercial housing and land developments around Lake Isabella, (2) the Lake Isabella area is becoming a major recreation area of California and is chiefly valuable for residential, recreational, business and community sites, and (3) the need for the lands by the California Department of Fish and Game is based upon conditions which existed in 1947 and prior to the creation of Lake Isabella. They allege further that due to recreation developments at Lake Isabella that hunting with firearms if not now prohibited, will be prohibited in the

---

1/ The names of the appellants, section, township and range in which each tract is located and Land Office serial numbers of their applications are listed in the attached Appendix "A".

near future. Appellants also assert that the lands have a market value of $40 per acre for small tract purposes, whereas the government realizes only a nominal fee from the present grazing use.

Appellants have advanced similar arguments with respect to the other lands involved. Thomas D. Bryant, applicant, Los Angeles 0106701 also states that a county road passes through the section in which the small tract he applied for is located, (sec. 7, T. 26 S., R. 33 E.) and Ben Fuller Rhyan, applicant, Los Angeles 0117585 alleges that his tract can be reached over the road to the dump. John H. Thrutchley and others for tracts in sections 28, 29, T. 26 S., R. 34 E. state that there are no water holes or range improvements upon the lands and that they are topographically suited for small tract purposes.

As to the lands in Sec. 36, T. 25 S., R. 33 E. Norman F. Sprague, grazing permittee filed an answer to a brief by Rufus Bailey (attorney for some of the small tract applicants) wherein he alleges that (1) most of the lands are too steep for cabin sites, (2) there is no feasible means of access to the lands, (3) they are still needed for game propagation and game management purposes, (4) small tract developments would disrupt established livestock operations, and (5) appellants have grossly misrepresented the revenue lost to the government by rejection of the small tract applications.

The Department of Fish and Game, State of California has protested any further classification of the public lands in T. 26 S., R. 33 E. for small tract purposes on the grounds that it would destroy important upland game habitat and restrict access to other public lands in the area. The Fish and Game Protective Association of Bakersfield, California, the Kern River Chamber of Commerce, the Kern River Valley Development, and the Kern River Fish and Game Association have also protested any further small tract developments on public lands in the area and allege that such developments would detract from the aesthetic features of the area, materially interfere with public recreation, and adversely affect business establishments dependent upon tourist trade for their income.

The lands were examined in November and December, 1954 and again in September and October, 1957, by personnel of this Bureau. Field reports state that the lands are valuable for public recreation purposes which opinion is concurred in by the National Park Service in a report covering the lands dated March 12, 1958. The reports state that Lake Isabella Reservoir is located about 50 miles from Bakersfield, California and 150 miles from Los Angeles, and that Lake Isabella constitutes a very important recreational outlet to the population of Southern California and population demands for recreation facilities are continually on the increase.

The reports further state that parts of the lands are suitable for picnic grounds, camp sites, and other intensive type recreational uses. Though certain of the lands are too rough in topography for such intensive uses they are valuable for hiking, bird hunting, wildlife conservation and watershed protection and serve as a protective area or buffer zone to the more level lands located on or near the valley floor.

Real estate values in the vicinity of Lake Isabella are very high due to the influx of the population for recreational pursuits. It is therefore to the advantage of both public and private agencies concerned with recreation development to acquire vacant public lands for that use whenever public lands of appropriate character are available. Because of the extremely rough and broken nature of the topography surrounding the valley at this point there is a very limited amount of publicly owned lands available for such purposes.

The Department has consistently held that an application for public lands secures no right in the applicant other than the right to have his application duly considered, John R. Ross et al., A-27259 (March 12, 1956), and that public lands are not subject to disposal until classified and opened to entry. Nelson A. Gerttula, 64 I. D. 225 (1957). Moreover, the decision as to whether the lands will be classified for disposal under the public land laws or not at all depends upon the public interest in the matter. Nelson A. Gerttula, supra.

The Department has indicated that applications to appropriate public lands that are highly valuable for public recreation or potentially valuable for such use are properly rejected. See John D. Riley, A-26696 (May 20, 1953); E. Lowell McKeith, A-26565 (January 15, 1953). It is the express policy of the Department to make public lands valuable for public recreational purposes available for use to the public in general.

Though the record indicates that a major part of the tracts sought may be suitable for development for cabin site purposes, it appears clear from the record that the lands are potentially valuable for picnicking, camping, and other recreational purposes by the public in general. It is our view that allowance of the small tract applications to serve only the individual recreational needs of the applicants would not be in the public interest, particularly when considered in relation to use of the lands by the general public. Accordingly, the following described lands of which the subject small tracts considered herein comprise a part are hereby classified under sec. 7 of the act of June 28, 1934, as amended (43 U.S.C. 315f) as chiefly valuable for public recreational purposes and as proper for disposal under the act of June 14, 1926, as amended (43 U.S.C. 869-1-3), and the regulations thereunder:

T. 25 S., R. 33 E. Sec. 26: NE¼NW¼, NE¼SW¼
35: NE¼NW¼, SW¼NE¼
36: NW¼.

T. 26 S., R. 32 E. Sec. 1: Lot 1
2: Lot 3
11: W½SE¼

T. 26 S., R. 33 E. Sec. 3: W½SE¼, SE¼SE¼
7: SW¼, NW¼SE¼
10: NW¼NE¼
11: NE¼NW¼
28: NW¼NW¼
29: S½NE¼SW¼, NE¼SE¼, SW¼SE¼
32: SW¼NE¼, E½NW¼, E½SW¼NW¼, NE¼SW¼, W½SE¼

T. 26 S., R. 34 E. Sec. 28: SW¼NE¼
29: SE¼SW¼, S½SE¼
32: W½NE¼, NW¼NW¼

T. 26 S., R. 35 E. Sec. 11: SE¼NW¼

Certain of the appellants have requested that the cases be assigned to a field commissioner for hearing. A hearing is not conducted as a matter of course to determine the proper classification of lands sought but is held only if there is reasonable likelihood that it would develop facts which would be decisive of the issues involved. Cf. Margaret A. Andrews, 64 I.D., 9 (1957). We believe that the evidence now in the record is sufficient to decide the issues. Therefore, the request for hearing is denied.

Allegations of appellants that the lands are suitable for small tract developments is not persuasive evidence of error in the classification. The Department has held that in the absence of error which appears on the face of the record that the burden is upon the applicant should he appeal to show by positive and substantial evidence that the adverse classification is erroneous. Mary Refugio Jackson et al., A-27236, etc. (February 29, 1956).

After careful consideration of all of the evidence in the record we believe that the lands are properly classified as unsuitable for disposal under the Small Tract Act and the decisions of the Managers are hereby affirmed.

Madeline Annie Albert and the other 63 small tract applicants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If appeals are taken by Madeline Annie Albert or any of the other small tract applicants involved herein, then the adverse parties to be served are: Department of Fish and Game, State of California, 722 Capitol Avenue, Sacramento, California; Norman F. Sprague, c/o E. LeRoy Folles, Jr. (attorney), Law Offices of Musick, Peeler and Garrett, 621 South Hope Street, Los Angeles 17, California; Fish and Game Protective Association, Post Office Box 1591, Bakersfield, California; Kern River Chamber of Commerce, Isabella, California; Edward C. Uffert, Kern River Valley Development, Isabella, California; Harold Cate, Secretary, Kern River Fish and Game Association, Kernville, California.

Earl J Thomas

Acting Director

Enclosure

DISTRIBUTION

Each Appellant (Certified Mail)
Mr. Rufus Bailey, Attorney (Certified Mail)
Norman F. Sprague (Regular Mail)
Department of Fish and Game, State of California (Regular Mail)
Fish and Game Protective Association of Bakersfield, California (Regular Mail)
Kern River Chamber of Commerce (Regular Mail)
Mr. Edward C. Uffert, Kern River Valley Development (Regular Mail)
Mr. Harold Cate, Secretary, Kern River Fish and Game Association (Regular Mail)
Hon. John F. Baldwin, M. C.
Hon. Thomas H. Kuchel
Hon. William F. Knowland
Hon. Cecil R. King, M. C.
Lands Staff Officer (1)
Appeals List No. 1
CFG

APPENDIX "A"

Name	Twp.	Rge.	Sec.	Land Office	Serial Number
Madeline Annie Albert	26 S.	32 E.	1	Sacramento	050009
Harold Raymon Humphries			2		050947
Francis Maurice Fox			11		051234
Michael William Stefura					048970
Robert Birdsy Nichols	25 S.	33 E.	26	Los Angeles	0129202
Hector Jules Gaboury					0108990
William Ernest Strohmeyer			35		0117495
Ben Fuller Rhyan					0117585
Robert Harry Wolff			36		0114888
Benjamin Arthur Crane					0114892
Norbert Raymond Tadewald					0114893
William Clark Limecooly					0114897
Austin Leroy Finch					0114934
James Ray Barger					0114976
Ernest Underwood					0114978
Janet Bashor Wright					0114985
Clara Edith Reinsdorff					0115103
Allan Lawrence Wolff					0115104
Jan Raymond Andrew					0115108
William Graves Andrew					0115109
Charles Frederick Hathaway					0115134
John Robert Donley					0115137
Morris Rockenmacher					0115139
Eulalia Mae Blau					0115144
Cora G. Hall					0115145
Morris B. Meyers					0115146
Dorothy Jean Rasmussen					0115217
Paul Riley Staats	26 S.	33 E.	7		0105402
Rufus William Gragg, Jr.					0106464
Thomas D. Bryant, Jr.					0106701
Lloyd Kenneth Hoskinson					0106702
Ada Blanch Parry					0106924
Robert Thornton Crozier					0105955
Ruth Lovisa Haddock					0106888
Lee E. Humiston			10		0136919
Roland Andrew Homolka			11		0107883
William Richard Watson			29		0116468
Herman Otto Suderman					0116695
Charles Francis Adams					0116713
Terry V. Ray			32		0115237
Dorothy J. Oakes					0116940

Name	Twp.	Rge.	Sec.	Land Office Serial Number
Gleaner Riseinger Oakes				0116944
Elmer W. Verner				0117031
Roma Frances Hall				0117035
Eleanore Hart				0117066
Dorothy Ann Ward				0117073
Edward Carl Nitsch				0117080
Emil J. Kasprzak	26 S.	34 E.	28	0116148
John A. Thrutchley				0116190
Harvey Arthur Smith			29	0105922
Alfred W. Wiedeman				0105836
Herman A. James				0105837
William Barber Wright				0105901
Joseph B. Tortorici				0105915
Walter Marshall Campbell				0105917
William Ross Shannon				0106152
Charles Arthur Glass				0106153
John Leslie Winters				0106154
Stephen Allison Hoit			32	0109508
Charles J. Sanders				0114589
Glemm Gordon Hugo				0109512
Urban Jacob Mertes				0109579
Harold F. Hurlocker				0109067
Robert E. Peterson	26 S.	35 E.	11	0118945

In reply refer to:

Los Angeles 0128788, etc.
0124207
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

May 26, 1958

Certified Mail
Return Receipt Requested

DECISION

Donald W. Henry, Jr. et al) :) Small Tract Applications

Decision of Manager Affirmed

Donald W. Henry, Jr., and others listed in Appendix "A" have appealed to the Director from decisions of the Manager, dated September 24, 1956, rejecting their respective small tract applications for the reason that the land applied for has been classified as suitable for disposal under a prior lieu selection application filed by the State of California (Los Angeles 0124207).

The general rule is that land will be classified for use or disposal pursuant to the first application, properly filed, unless the facts and circumstances support another classification as being more in the public interest. The State's application, in the instant case, having been first in point of filing, was entitled to prior consideration over subsequent applications for the same land. Nelson A. Gerttula, 64 I. D. 225 (1957).

Moreover, the Department has specifically stated that applications made by States in exercise of their lieu selection rights should, as a matter of principle, be honored over competing private applications for the same land absent other compelling public interest considerations. Nelson A. Gerttula, supra.

No error has been shown in the present classification of the land, and we can find no reason to change the Manager's decisions. The decisions of the Manager are therefore affirmed.

Each applicant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR

Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by any one of the applicants, then the adverse party to be served is:

State of California
C/o Division of State Lands
1403 Twelfth Street
Sacramento 14, California.

For the Director:

A. H. Furr

Attachment

DISTRIBUTION:

Each Appellant (Certified Mail)
State of California, C/o Division of State Lands (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

APPENDIX "A"

Serial No. Los Angeles	Name
0128788	Donald W. Henry, Jr.
0128064	Harry C. Shirer
0128066	Stewart J. Barlet, Jr.
0128067	Leila A. Tompkins
0128068	Otis V. Crooks
0128071	Walter E. Briley, Sr.
0128076	Michael Ferguson
0128078	Robert Ferguson
0128791	Meredith S. Fretz
0128793	Amos W. Benton

35615

appeal to Sec
affirmed A-27787 12-15-58

In reply refer to:
Los Angeles 0127149, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 5, 1958

Certified Mail
Return Receipt Requested

DECISION

Nick Furkona et al	:	Small Tract Applications

Decisions of Manager Affirmed

Nick Furkona and nine others listed in Appendix "A" have appealed to the Director, from decisions of the Manager, rejecting their small tract applications. The lands embraced in the applications are located in the same vicinity, all within sec. 18, T. 3 S., R. 3 E., S.B.M., California.

The applications were rejected for the stated reason that the lands sought were determined to be unsuitable for small tract development, on findings of field examination which revealed: (1) The lands are located on the western slope of the San Gorgonio Pass where extreme atmospheric turbulences develop; (2) Severe windstorms, sometimes of hurricane proportions, and shifting sands would make the construction and maintenance of access roads very difficult and expensive, and would necessitate a very strong type of cabin construction; (3) Periodic flooding of Gorgonio River renders the area dangerous for residential purposes.

The question in issue in the cases is one of proper classification, and the appellants have submitted no positive evidence that the adverse classification is erroneous.

The appellants' statements of reasons for their appeals have been carefully considered. They provide no basis for changing the classification of the lands as not suitable for small tract purposes. The appellants' applications were properly rejected. Mrs. Jessie M. Rowland, et al., A-27354 (August 13, 1956).

The Manager's decisions are therefore affirmed.

Each party listed in Appendix "A", attached, is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Attachment

DISTRIBUTION:

Each Appellant (Certified Mail)
Hon. Craig Hosmer, Member of Congress
Lands Staff Officer (1)
Appeals List No. 1
MAG

APPENDIX "A"

Name	Serial No.
Nick Furkona	Los Angeles 0127149
Price Lovelady	0128250
Max B. Epley	0128252
Joseph F. Skiba	0128254
John B. Popham	0128687
Dale Popham	0128688
Mrs. Barbara L. Conn	0129327
Dale D. Trinkle	0129599
Edwin John Victor	0129809
Mrs. Georgia Schrepfer	0129841

37405

In reply refer to:

Los Angeles 091195
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 16, 1958

Certified Mail
Return Receipt Requested

DECISION

Florence E. McMahon : Small Tract Lease
:
:

Appeal Dismissed
Rejection of Application for Renewal Affirmed

Florence E. McMahon has appealed to the Director, from a decision of the Manager, dated December 28, 1956, which rejected an application for third renewal of her small tract lease. The application was rejected because a satisfactory showing was not made that failure to meet requirements for sale of the tract during the term of the lease and renewals thereof was justified and that nonrenewal of the lease would work an extreme hardship on the lessee.

A post-office return receipt shows that notice of the Manager's decision was served on the appellant on January 7, 1957. On February 7, 1957, a notice of appeal from the appellant was received in the Land Office. Since February 6, 1957 was the last date upon which an appeal could be timely filed, the appellant's notice of appeal was not timely filed and is not entitled to be considered. 43 CFR, 1956 Supp. 221.2.

Even were the procedural defect not present, Mrs. McMahon's appeal on the merits does not warrant a change in the Manager's decision.

The record shows that the appellant's application for third renewal of the lease described improvements on the land to be the same as those previously described, serious illness being given as the reason for failure to correct the deficiencies in improvements. The frame structure on the land, constructed of used building materials, was deficient in that it was poorly constructed, not of a substantial or permanent nature, and portions of the roof were torn loose and in need of repair. It appears that no apparent progress was made during the terms of the first and second renewal leases toward correcting the unsatisfactory condition of the structure or improving the exceedingly unsightly and objectionable appearance of the site and the unacceptable sanitary facilities.

The appellant's statement of reasons has been reviewed carefully. It does not provide a sufficient basis for a finding, under 43 CFR, 1956 Supp. 257.15 that the lessee's failure to meet the requirements for sale of the tract is justified and that nonrenewal of the lease would work an extreme hardship on the appellant. Cf. Cecil R. Vaughn, A-27477 (October 24, 1957).

The appellant will be allowed by the Manager a reasonable period of time after this decision becomes final to remove from the land or otherwise dispose of the improvements. Upon her failure to do so, the improvements will become the property of the United States and will be dealt with accordingly.

Florence E. McMahon is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mrs. Florence E. McMahon (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:
Los Angeles 094555
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 19, 1958

DECISION

John Alexander Moody : Small Tract

Case Remanded

John Alexander Moody appealed from a decision of the Manager, dated May 25, 1956, rejecting an application for second renewal of his small tract lease for the reason that the renewal application was filed four days after the expiration date of the lease, which was May 11, 1956. Subsequently, on September 14, 1956, Mr. Moody submitted an application to purchase the land.

The Departmental regulation governing the filing of applications to purchase land held under small tract lease (43 CFR, 1957 Supp., 257.13) 1/ is not mandatory but only directory as to the time when an application to purchase is to be filed. The Department has held that an application to purchase which is made within a reasonable time after the expiration of the lease term, may be considered on its merits, provided no intervening rights have attached to the land. Albert H. Dobry et al, 64 I.D. 116 (1957). Since it was held in Evalena M. Johns, Los Angeles 090981 (April 2, 1958) that an application to purchase filed 120 days late did not exceed the bounds of reason, the appellant's purchase application was filed within a reasonable time after the expiration of the lease.

The appellant has apparently substantially complied with the requirements for purchase of the tract. Accordingly, the case is remanded to the Land Office, through the Assistant to the Bureau's State Supervisor at Los Angeles, California, for further consideration looking to the issuance of final certificate, if all else be regular.

For the Director:

Distribution:
Mr. John Alexander Moody (Regular Mail
Asst. to SS(Los Angeles) w/Case Record, Los Angeles 094555
Lands Staff Officer (1)
Appeals List No. 1
MAG

1/ The same regulation was in effect when the appellant's application to purchase was filed.

37405

appeal to Sec
affirmed A-27835 3/2/59
List 4/6/59

In reply refer to:

Los Angeles 0107641 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 19, 1958

Certified Mail
Return Receipt Requested

DECISION

Lawrence Elsworth Lowry, et al. : Small Tract Applications

Decisions of the Manager Affirmed

Lawrence Elsworth Lowry and others listed in Appendix "A", attached, have appealed to the Director from decisions of the Manager which rejected their small tract applications because the land is too rough, hilly and mountainous for small tract purposes.

Field classification reports and accompanying aerial photographs show that the land is rough and precipitous in character. Due to the extremely rough and mountainous topographical features of the land, access to individual tracts would require extensive road building operations. Access roads could not be constructed along individual tract boundaries but would have to adhere to the topographical features of the land. Consequently, there is no manner in which reservations for rights-of-ways could be made which would provide access to the various tracts without first completing an extensive cadastral survey of the land.

The Department has held that small tract applications for rough, inaccessible land are properly rejected. Harry Carson et al., A-27289 (May 28, 1956); or for land otherwise unsuited for small tract purposes because of the adverse physical features. Cf. Mrs. Jessie M. Rowland, Sydney Thomas Morris, A-27354 (August 13, 1956). Moreover, it is our view that public lands should not be classified for disposal under the Small Tract Act under circumstances which would involve the Bureau in complex subdivisional planning and cadastral surveys. The survey problem involved in the disposal of public land under the Small Tract Act in such circumstances was recognized by the Department in James J. Kendrew, A-27145 (April 8, 1955).

The issue involved is the proper classification of the land and the appellants have not shown by positive and substantial evidence that the classification of the land as unsuitable for disposal under the Small Tract Act is in error. Mary Refugio Jackson et al., A-27236 etc. (February 29, 1956). Therefore, the decisions of the Manager are affirmed.

Lawrence Elsworth Lowry and the other persons listed in Appendix "A" are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosures 2

DISTRIBUTION:

Hon. William F. Knowland, United States Senate (Re 0107651)
Each Applicant listed in Appendix "A" (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

APPENDIX "A"

Name	Subdivision	Sec.	Twp.	Rge.	Serial Number Los Angeles
Lawrence E. Lowry	S½SE¼NE¼SE¼	21	26 S.	33 E.	0107641 ✓
Paul N. Hanover	SW¼SE¼NE¼SE¼				0141129
Richard E. Welsh, Jr.	SW¼NE¼NE¼SE¼				0141132
Neal F. Current	NE¼SE¼NE¼SE¼				0144906 ✓
Robert W. Campbell	N½SE¼NE¼SE¼				0146362 ✓
Oclotlan U. Richmond	N½NE¼NE¼SE¼				0146363
James H. Thomson	S½SE¼NE¼SE¼				0146393
Howard C. Ericsson	S½NE¼NE¼SE¼				0146394 ✓
Kenneth A. Current	N½NE¼NE¼SE¼				0152266
Joe Otto Denton	S½NE¼NE¼NW¼	14	26 S.	32 E.	Sacramento 052171

37405

appeal to Sec
In reply refer to:
Reversed A-27804 2-3-59
Los Angeles 0146064, etc. 1/
0129814
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 25, 1958

Certified Mail
Return Receipt Requested

DECISION

Lionel John Benner et al : Small Tract Applications
:
Albert F. Bolz : Public Sale Application
:

Cases Remanded

Lionel John Benner and the other applicants listed on Appendix A have appealed to the Director from a decision of the Manager, which rejected their small tract applications because there is no means of public access to the 80-acre tract in which the lands are situated and because the entire 80 acre tract had been classified for disposal by public sale. Though appellants urge that Ave. 0-8 has been in public use for many years they have furnished no proof in support of that allegation or that the road is in fact a public right-of-way. 2/Their contentions are therefore not persuasive evidence of error in the classification. Cf. Mary Refugio Jackson et al., A-27236 (February 29, 1956).

It is our view that land for which there is no public access cannot be properly classified for lease and sale under the Small Tract Act of June 1, 1938 (43 U.S.C., 1952 ed., 682a) as amended, due to the improvement requirements since a lessee would necessarily need to acquire access within the term of the lease in order to meet with the improvement requirements. However, the lack of access would not necessarily bar direct sale under the Small Tract Act, supra., if there is an evident demand for the land for small tract purposes and all of the public land in the isolated tract involved could be readily disposed of under the act, or in some other manner which would relieve the government of the administration of small scattered irregularly shaped public land tracts for which there is no market demand or public need and where the counties have adequate authority to establish building and sanitation requirements. See 43 CFR 1957 Supp. 257.2(b).

1/ Applicants are listed by name, address, and Land Office Serial No. on Appendix A.

2/ The record shows that the public portion of Ave. 0-8 extends west from U.S. Highway 6 to the east line of sec. 18, T. 6 N., R. 12 W. (Ave. 30 W.). The remaining portion of this road from Ave. 30 W. into the NE$\frac{1}{4}$ sec. 13, T. 6 N., R. 13 W., is a private road. The lands in issue are located in the W$\frac{1}{2}$SE$\frac{1}{4}$ sec. 13, T. 6 N., R. 13 W., S.B.M.

There is a total of 15 small tract applications each comprising five acres of the land. These cover all of the 80 acres of public land except two five acre tracts. According to topographical maps the lands embraced by the two remaining five acre tracts are similar in character to the other 70 acres involved. The record shows further that privately owned land in the vicinity is being purchased and subdivided for residential purposes. It therefore appears that there is considerable demand for such land, and that all of the 80 acre tract might be readily disposed of by direct sale under the Small Tract Act. See 43 CFR 1957 Supp. 257.5(a)(3). In a very similar case the Department held that where a tract of land had been classified as suitable for disposal by public sale upon the basis of a record which did not indicate the intense small tract interest in the area, it is proper to reclassify the land for disposal under the Small Tract Act. Franklin P. Butts, A-26801 Supp. (November 15, 1954). Therefore, when this decision becomes final, the cases will be remanded to the Manager through the Assistant to the State Supervisor, Los Angeles, California for further action. The public sale application is hereby rejected.

Albert F. Bolz is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Albert F. Bolz, then the adverse parties to be served are the 15 small tract applicants listed in Appendix A which also shows the current address of each of the applicants.

Charles P. Mead
Acting Director

Enclosure

DISTRIBUTION:

Albert F. Bolz (Certified Mail)
Each small tract applicant (Regular Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

APPENDIX A

NAME	SERIAL NO.
Mr. Lionel John Benner 18609 Calvert Street Reseda, California	Los Angeles 0146064
Mrs. Edith Cecelia Durham 11211 Cynthia Avenue Garden Grove, California	0146065
Mrs. Isa Lena Price 7800 Balboa Boulevard Van Nuys, California	0146067
Miss Ida Muriel Knowles 1505½ Beverly Terrace Avenue Montebello, California	0146069
Mr. Howard Allen Carmichael 1505½ Beverly Terrace Avenue Montebello, California	0146068
Mr. Jack Jolley, Jr. 1318-C Euclid Street Santa Monica, California	0146070
Miss Beverly Ann Morse 15424 Mayall Street Sepulveda, California	0146071
Mr. George Lee Mains 6917 Bertrand Avenue Reseda, California	0146072
Mr. Frank J. Kamensky 18607 Calvert Street Reseda, California	0146073
Mr. Wilbur Lee Pound 8006 Newcastle Avenue Reseda, California	0146074
Mr. Wylie Boyd Pound 15523 Sylvanwood Avenue Norwalk, California	0146075

NAME	SERIAL NO.
Mr. Lee Roy Thompson 13130 Flallon Norwalk, California	0146076
Mrs. Holly Louise Quillen 7046 Crebs Avenue Reseda, California	0146077
Mr. Clifford Everett Shank, Jr. 4521 Vineland Avenue North Hollywood, California	0146086
Mr. Steven George Gable, Jr. 7312 Rhea Avenue Reseda, California	0146087

37405

In reply refer to:
Los Angeles 080606
Los Angeles 093539
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 9, 1958

Certified Mail
Return Receipt Requested

DECISION

James E. Wilkinson Leona W. Beall	:	Small Tract Lease

Manager's Decisions Affirmed

James E. Wilkinson and Leona W. Beall have appealed from decisions of the Manager rejecting their applications for second renewals of small tract leases. The applications were rejected for the stated reasons that no valuable, permanent improvements have been placed on the leased tracts since the first renewals were granted and that the reasons given for failure to comply with the terms of the lease were not considered sufficient to justify further renewal.

Where an application for renewal is timely filed, but the required improvements have not been erected, a renewal may be allowed where the failure to erect improvements is justified, and the applicant shows that nonrenewal would work an extreme hardship. Henry Offe, 64 I.D. 52 (1957). That situation does not exist here. The applicants have placed on the land only cement slabs. They assert that family circumstances prohibited the further construction of the required improvements. After carefully considering these assertions, we find there has been ample time in which to construct the improvements and there is insufficient justification for failing to construct the required improvements within the terms of the small tract leases and the previous renewals. Cf. Arline Mary Scheider, Los Angeles 099515 (February 25, 1958). The appellants have not shown that failure to renew the leases will result in extreme hardship on them.

The decisions of the Manager are therefore affirmed.

If the lands are disposed of to other persons they will be required to reimburse the appellants for the improvements if the improvements are of value to such persons.

Mr. Wilkinson and Mrs. Beall are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Dunn

Enclosure

DISTRIBUTION:
Mr. James E. Wilkinson (Certified Mail)
Mrs. Leona W. Beall (Certified Mail)
Lands Staff Officer
Appeals List No. 1
EJ & MG

39080

In reply refer to:
Los Angeles 0101087
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 9, 1958

Certified Mail
Return Receipt Requested

DECISION

Ervie Albert Dunn : Small Tract Lease

Decision of Manager Affirmed

Ervie Albert Dunn has appealed from a decision of the Manager, dated October 3, 1957, which purportedly held for cancellation his small tract lease because he failed to comply with the rules of practice in appealing from the Manager's decision of March 26, 1957. That decision rejected an application for second renewal of the lease for failure to construct suitable improvements on the land and thereby meet the requirements for purchase of the tract.

The Manager's decision of October 3, 1957, to the extent that it held that the appellant had no rights in the land, is correct. Since the renewal of the lease had expired on March 17, 1957, there was no lease in being subject to cancellation. Cf. Duncan Miller, B. E. Chamberlin, A-27458 (August 12, 1957). Under the applicable section of the rules of practice (43 CFR, 1957 Supp., 221.2) an appeal involving a public land matter may not be considered where the filing fee required for such an appeal is not timely received.

Even if the procedural defect were not present, consideration of the merits would not lead to a different result. The record discloses that the improvements placed on the land during the 3-year term of the original lease consisted chiefly of a concrete foundation or "slab". Such improvement fails to show compliance with the terms of a small tract lease.[1] Chester A. Werncke, Los Angeles 0102013 (April 4, 1958).

---

[1] Appellant agreed under section 2(a) of the lease, to construct upon the land appropriate improvements for the use for which the lease was issued.

The reasons offered by the appellant are not deemed adequate, to excuse his failure to construct substantial improvements. Nor has the appellant shown that nonrenewal of the lease will be an extreme hardship to him in view of the nature and nominal value of his improvements. Cecil R. Vaughn, A-27477 (October 24, 1957).

The Manager's decision of October 3, 1957, is affirmed.

If the land is disposed of, the person acquiring the land will be required to compensate the appellant for the fair value of his improvements, if such improvements are of value to the person acquiring the land.

Mr. Dunn is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Attachment

DISTRIBUTION

Mr. Ervie Albert Dunn (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:
Los Angeles 0113030
062322
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 10, 1958

Certified Mail
Return Receipt Requested

DECISION

Robert Newton Gregory :
Edith LeDell Billmyer : Small Tract

Case Remanded

Robert Newton Gregory has appealed from the decision of the Manager rejecting his small tract application because of conflict with small tract lease Los Angeles 062322, the lessee of which applied for purchase of the land pursuant to her lease prior to the filing of the appellant's application.

The record discloses that small tract lease Los Angeles 062322 for the tract of land involved in this appeal was issued to Mrs. Billmyer on April 1, 1947 for a term of five years. The records show that on March 27, 1952, Mrs. Billmyer filed a renewal application reciting that a cabin would be erected upon the land. A renewal lease expiring March 31, 1953 was granted. On March 30, 1953 she filed an application for further renewal of the lease stating that she had bought a cabin to be moved onto the land, but vandals had destroyed it. A further renewal to March 31, 1954 was granted. On March 30, 1954, Mrs. Billmyer filed an application to purchase the tract.

The appellant asserts that Mrs. Billmyer did not have the necessary improvements on the land on or before March 31, 1953. His appeal included affidavits by three individuals in support of his statements. He contends further that on April 1, 1954, when he made and mailed his application for lease, he visited the subject land and observed that there were no improvements on the tract. The good faith of Mrs. Billmyer is manifest and has been recognized. Her application to purchase, under Bureau practice, could be treated as an application for renewal, which if granted, would extend her lease and thus require the rejection of the appellant's application. It is not our policy to finally adjudicate the rights of entrymen solely upon technical considerations. Dawkins v. Hedin, 44 L.D. 371 (1915).

The option to purchase clause contained in Mrs. Billmyer's lease afforded her, as the lessee, an opportunity to purchase the leased tract at or after the expiration of one year from the date of the renewal lease granted April 1, 1953, as provided under the regulations. Mrs. Billmyer having timely filed an application to purchase the tract, her application is entitled to consideration on its merits prior to consideration of any other application for the same land. The appellant's application should not have been rejected for the sole reason that the lessee had filed an application to purchase the land. Such a later filed application should have been suspended, rather than rejected, pending a final decision on the purchase application of the lessee. *Minta Harper Dozier*, A-27221 (November 17, 1955). When this decision becomes final, Mrs. Billmyer's case will be remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles, California, for issuance of final certificate to Mrs. Billmyer if all else be regular since we determine that the improvements made on the land by Mrs. Billmyer are satisfactory to comply with the lease requirements.

The Manager's decision is therefore affirmed as modified by this decision.

Mr. Robert Newton Gregory is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Robert Newton Gregory, then the adverse party to be served is:

Mrs. Edith LeDell Billmyer
1102 Bedford Street
Los Angeles 35, California

For the Director

A. H. Dunn

Enclosure

Distribution:
Mr. Christy J. Nelson, Attorney for Appellant (Certified Mail)
Mr. Robert Newton Gregory (Certified Mail)
Mrs. Edith LeDell Billmyer (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:
Los Angeles 094266
0101674
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 14, 1958

DECISION

Elbridge Payson Allen :
 : Small Tracts
George Arthur Shopbell :

Cases Remanded

Elbridge Payson Allen and George Arthur Shopbell have appealed from decisions of the Manager rejecting their respective applications to purchase the small tracts leased to them. Both applications were rejected upon the stated ground that they were not filed until after the expiration of the leases involved.

A small tract lease dated April 10, 1952 was issued to Appellant Allen for a term of three years. The lease was renewed for a year effective April 10, 1955. Therefore, it expired April 9, 1956. An application for purchase was received in the land office on April 30, 1956, 21 days after the lease had expired.

A small tract lease dated April 15, 1953 was issued to Shopbell for a term of three years. The lease expired under its terms April 14, 1956. An application for purchase was received in the land office on April 26, 1956, twelve days after the lease had expired.* The appellants assert that they have constructed improvements on the lands sufficient to meet the requirements of purchase.

Since the time of the issuance of the Manager's decisions, it has been held by the Department that the regulations governing applications to purchase land held under small tract leases (43 CFR, 1956 Supp., 257.13) are only directory as to the time when an application to purchase is to be filed, and that, if no intervening rights attached, applications filed within a reasonable time after the expiration of the leases may be considered on their merits. Albert H. Dobry, George H. Borovay, 64 I. D. 116, 122 (1957).

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*Since April 14, 1956 fell on a Saturday, the application for renewal, if filed on Monday, April 16, 1956, would have been considered as timely filed. Cf. Robert Dale Scarrow, A-27023 (January 11, 1955) and 43 CFR, 1956 Supp., 221.96.

We find that the appellants' applications to purchase were not filed unreasonably late and the records do not disclose any intervening rights.

Accordingly, the cases are remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles, California. for consideration of the applications to purchase on their merits.

For the Director:

DISTRIBUTION:

Mr. Elbridge Payson Allen (Regular Mail)
Mr. George Arthur Shopbell (Regular Mail)
Lands Staff Officer
Ass't to S. S., LA with case records LA 094266 and 0101674
Appeals List No. 1
JHO'D

39080

appeal to Sec
affirmed A-27827 - 2-19-59

In reply refer to:
Los Angeles 0101557 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 22, 1958

Certified Mail
Return Receipt Requested

DECISION

Holbert E. Thompson : Small Tract

Manager's Decisions Affirmed

Holbert E. Thompson and others[1] have appealed from decisions of the Manager, rejecting their applications for renewal of their small tract leases, because they were not filed before the actual expiration of the leases.

The records disclose that three-year leases were issued to the appellants, to expire on September 7, 1956. The day the leases were due to expire, an informal request by H. E. Thompson, one of the lessees, to extend the leases for one year was received in the land office. However, the records do not contain any authorization to him from the other lessees to represent them. Cf. Earl C. Hartley et al., 65 I.D. 12 (1958). Moreover, H. E. Thompson has not shown that he is qualified to practice before the Department (43 CFR, 1954 ed., sec. 1.3) and therefore his letter received September 7, 1957, insofar as the other appellants are concerned, is not entitled to consideration. It was not until September 24, 1956, that the appellants filed forms 4-775a; the applications for renewals required by the regulations. In the formal renewal applications the appellants state that a concrete slab costing $154 was poured on each of their respective tracts.

It is clear that the requisite renewal applications were not filed

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[1]

Holbert E. Thompson	Los Angeles 0101557
Howard J. Thompson	0101798
Johnson G. Dunn	0101801
Sam B. Benson	0103583
Marshall R. Dunn	0104373

until after the leases had expired. Cf. 43 CFR, 1956 Supp. 257.15(a). The applications for renewal were therefore not timely filed.

The pouring of a cement slab is not in and of itself a sufficient predicate for renewal of a small tract lease. Chester A. Werncke, Los Angeles-0102013 (April 4, 1958). The appellants have not shown that their failure to construct the necessary improvements contemplated by the leases is justified and that nonrenewal would work an extreme hardship on them. Jimmy Deones, A-27539 (February 11, 1958). Therefore, there appears to be no basis on which the small tract leases may be renewed. However, the appellants are at liberty to make application for other small tracts.

Accordingly, the decisions of the Manager are affirmed.

The appellants will have a period of 90 days within which to remove their improvements from the land or to make other disposition thereof. If the improvements are disposed of to a person other than a subsequent lessee they must be removed from the land within the 90-day period, otherwise the improvements will become the property of the United States. (43 CFR, 1956 Supp., 257.19(c)).

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Acting Director

Enclosure

DISTRIBUTION:
Hon. Clair Engle, House of Representatives (5)
Mr. Clyde C. Downing, Attorney at Law (Certified Mail)
Mr. Holbert E. Thompson (Regular Mail)
Mr. Marshall R. Dunn (Regular Mail)
Mr. Sam B. Benson (Regular Mail)
Mr. Johnson G. Dunn (Regular Mail)
Mr. Howard J. Thompson (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

In reply refer to:
Los Angeles 0122062 etc.
0122197 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 24, 1958

Certified Mail
Return Receipt Requested

DECISION

George W. Monahan et al. 1/ : Small Tract Applications ✓

Willie Elmo Matthews 2/ :
Frances J. Clark : Desert Land Applications
Herman Blackman :

Cases Remanded

George W. Monahan and 73 other small tract applicants listed on Appendices A and B, attached, have appealed to the Director from decisions of the Manager which rejected their small tract applications because the land had been classified as suitable for disposal under the Desert Land Act.

As a result of field examination of the lands, it had been concluded that the lands involved in the present appeals together with certain other lands in Johnson Valley might possess sufficient agricultural potential to qualify for disposal under the agricultural land laws. It was on the basis of that record that the lands were classified as suitable for desert land entry.

However, it is also clear from the record that there is an intense demand for public lands in the area for small tract purposes. Contour maps reveal that the topography of the land is favorable for small tract development and the record indicates that ground water is of satisfactory quality for culinary purposes and is available in amounts required for sanitation and other purposes. The Department has held in other cases in this same general area that public lands in such circumstances are more properly classified for disposal under the Small Tract Act. Laura L. Strickland, A-26937 (August 18, 1954).

1/ The names of the applicants, addresses of applicants, area of each section in which the various tracts are located, and the serial numbers of the respective applications involved are listed in Appendices A and B.

2/ The desert land application of Willie Elmo Matthews covers the S$\frac{1}{2}$ Sec. 1; the application of Frances J. Clark covers the N$\frac{1}{2}$ Sec. 1; and the application of Herman Blackman covers the E$\frac{1}{2}$SW$\frac{1}{4}$, SE$\frac{1}{4}$ Sec. 2, all in T. 3 N., R. 3 E., S.B.M., California

Because of the intense demand for small tracts in Southern California and other types of conflicting applications for the same lands in the area, the Department has enunciated a land disposal policy for that area. The disposal program outlined by the policy contemplates in applicable portion that small tract development will be considered a higher use and given preference over agricultural development in the classification of lands.

After careful consideration of the circumstances in these cases it is our opinion that the lands are primarily suitable for small tract purposes. Therefore, the decisions of the Manager are hereby reversed and the lands are classified for disposal under the Small Tract Act and the desert land applications of Willie Elmo Matthews, Los Angeles 098510; Frances J. Clark, Los Angeles 094860; and Herman Blackman, Los Angeles 0106162 are hereby rejected. 3/

Willie Elmo Matthews, Frances J. Clark, and Herman Blackman are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken there must be strict compliance with the regulations.

If an appeal is taken, each appellant must serve a copy of all documents on the adverse parties. An adverse party in this case would be any person whose application covers land also included in the application of the appellant. The names, addresses, and the legal subdivisions involved in the conflicting small tract applications are outlined on Appendices A and B.

Earl J. Thomas

Acting Director

Enclosure

3/ The appellants listed in Appendix B have failed to show that they have served the adverse parties as required by the rules of practice. Though certain of the appellants have submitted affidavits of mailing, this does not constitute proper proof of service, 43 CFR 221.95(b), 1957 Supp. In the event they did fail to serve the adverse party, they have lost their rights under their respective applications. However, when this decision becomes final and the cases are remanded to the Manager, they should be afforded the opportunity to show that they did serve timely notice of appeal on the adverse party as required by the regulations (Della Lee Halloran, A-27433 (January 31, 1957)) and have thus preserved their rights. The parties affected by adverse determinations of the Manager in this matter shall be afforded a right of appeal to this office.

DISTRIBUTION:
Hon. Harry R. Sheppard, House of Representatives
Hon. William F. Knowland, United States Senate
Hon. James E. Murray, United States Senate
Hon. Thomas H. Kuchel, United States Senate
Hon. Patrick J. Hillings, House of Representatives
Hon. James B. Utt, House of Representatives
Hon. Cecil R. King, House of Representatives
Hon. Edgar W. Hiestand, House of Representatives
Hon. Hubert B. Scudder, House of Representatives
Hon. J. Arthur Younger, House of Representatives
Mr. Henry Himmelfarb, Attorney for Frances J. Clark (Certified Mail)
Miss Frances J. Clark (Regular Mail)
Mr. Willie Elmo Matthews (Certified Mail)
Mr. Herman Blackman (Certified Mail)
Each small tract applicant listed in Appendices A and B (Regular Mail)
Mr. Edward E. Everly, Attorney (Regular Mail)
Mr. Jacob N. Wasserman, Attorney (Regular Mail
Appeals List No. 1
Lands Staff Officer (1)
CFG

Appendix "A"

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
Mr. George W. Monahan,	10320 Grevillae Avenue Inglewood, California	3N	3E	2	S½	Los Angeles 0122062
Mr. Albert A. Thompson,	c/o Bernard Weinstein 602 Arizona Land Title Bldg. Tucson, Arizona	3N	3E	1	S½	0122184
Mr. Samuel G. Collier,	26606-14 & W. Street Highland, California	3N	3E	1	N½	0122166
Mrs. Ilarue V. Stuart,	756-20th Street San Bernardino, California	3N	3E	2	S½	0121617
Mr. Vergil M. Johnson,	1803 Fremontia Drive San Bernardino, California	3N	3E	2	S½	0121624
Mr. William H. Wilson,	747-20th Street San Bernardino, California	3N	3E	2	S½	0121625
Mr. Kenneth C. Gavitt,	351-E. First Street Rialto, California	3N	3E	2	S½	0121626
Mr. J. D. Wray,	806 Calle Puente San Clemente, California	3N	3E	2	S½	0121627
Mr. Roy D. Linfield,	819 S. Flower Inglewood, California	3N	3E	2	S½	0122063
Mr. Dan L. Linfield,	11017 Freeman Avenue Inglewood, California	3N	3E	2	S½	0122064
Mr. Everett D. Monahan,	11123 Eastwood Avenue Inglewood, California	3N	3E	2	S½	0122065

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
Mr. Steve T. Takahashi,	2959 Somerset Drive Los Angeles 16, California	3N	3E	2	S½	Los Angeles 0122089
Mr. John M. Yakura,	21711 So. Vera Street Torrence, California	3N	3E	2	S½	0122090
Mr. Willard H. Wright,	169 E. South Street Rialto, California	3N	3E	2	S½	0122396
Mr. Kiyoshi Fujimoto,	3950 Montclair Street, #4 Los Angeles 18, California	3N	3E	2	S½	0122992
Mr. George R. Reagan,	1458 West 110th Street Los Angeles 47, California	3N	3E	2	S½	0123328
Mr. Joseph I. Reagan,	536 E. 120th Street Hawthorne, California	3N	3E	2	S½	0123329
Mr. Samuel W. Goodwin,	3213 Malcolm Avenue Los Angeles 34, California	3N	3E	2	S½	0123433
Mr. Arthur G. Olson,	940 Enterprise Avenue Inglewood 3, California	3N	3E	2	S½	0123469
Mr. Ralph K. Kauffman,	12255 Sunnybrook Lane Whittier, California	3N	3E	2	S½	0123457
Mrs. Walter E. Timberlake, Jr.,	1528 Orange Avenue Costa Mesa, California	3N	3E	2	S½	0123596
Mr. Lawrence Priddy, Jr.,	1210 Bay Laurel Drive Menlo Park, California	3N	3E	2	S½	0123812

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mr. Richard E. Miller,	11732 Steele Drive Garden Grove, California	3N	3E	2	S½	0123813
Mr. Jens L. Rasmussen,	904 W. Third Street Pomona, California	3N	3E	2	S½	0123818
Mr. Samuel A. Cornish,	812 Roberts Street Fort Atkinson, Wisconsin	3N	3E	2	S½	0123957
Mr. Robert C. Hudson,	34002 Malaga Drive Post Office Box 231 Dana Point, California	3N	3E	2	S½	0123970
Mr. Vern O. Estes,	141 S. Harwood Street Orange, California	3N	3E	2	S½	0124142
Mr. LeRoy V. Floberg, Sr.,	3317 N. Muscatel So. San Gabriel, California	3N	3E	2	S½	0124395
Mr. David F. Green,	2424 El Paseo Alhambra, California	3N	3E	2	S½	0124400
Mr. Don D. VanZandt,	6058 N. Golden West Temple City, California	3N	3E	2	S½	0124401

Appendix "B"

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mrs. Laura L. Gorham,	Post Office Box 100 Joshua Tree, California	3N	3E	1	S½	0121530
Mr. Leonard C. Brose,	915 Ford Street Burbank, California	3N	3E	1	S½	0122197
Mr. James R. Burkes,	933 Unruh Avenue La Puente, California	3N	3E	1	S½	0122198
Mr. George G. Giddens,	7902 Glencal Street Huntington Beach, California	3N	3E	1	S½	0122208
Mr. Ralph F. Stewart,	915 Ford Street Burbank, California	3N	3E	1	S½	0122252
Mr. Earl S. Bolin,	Route 2 Box 233 Mulberry, Arkansas	3N	3E	1	S½	0122367
Mr. Leward V. Thompson,	12931 Hamlin Street No. Hollywood, California	3N	3E	1	S½	0122446
Mr. Robert L. Thompson,	7243 Farmdale Avenue No. Hollywood, California	3N	3E	1	S½	0122447
Mr. Lorence D. Dodson,	12329 Burton Street No. Hollywood, California	3N	3E	1	S½	0122448
Mr. William A. Fox,	929 E. 3rd Street San Bernardino, California	3N	3E	1	N½	0122169
Mr. Frank D. Volock,	845 Sylvan Boulevard Redlands, California	3N	3E	1	N½	0122377

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No. Los Angeles
Mr. William W. Nimmo	309 Division Redlands, California	3N	3E	1	N½	0122932
Mr. Charles Volock	845 Sylvan Boulevard Redlands, California	3N	3E	1	N½	0123013
Mr. William H. Scheid	2734 Serrano Road San Bernardino, California	3N	3E	1	N½	0123288
Mr. John Viera	5320 Allan Street Los Angeles 32, California	3N	3E	1	N½	0124555
Mr. Hugo Bieberdorf	125 E. Jefferson Pomona, California	3N	3E	1	N½	0124661
Mr. Jesus C. Ignacio	6618 Bonsallo Avenue Los Angeles 47, California	3N	3E	1	N½	0124715
Mr. Juan S. Santos	205 E. Gage Avenue Los Angeles 3, California	3N	3E	1	N½	0124716
Mr. Edward Bieberdorf	Route 1 Box 87 Del Mar, California	3N	3E	1	N½	0124717
Mr. Frank Falsetta	7174 Adwen Street Downey, California	3N	3E	1	N½	0124726
Mr. Carl W. Bieberdorf	Route 1 Box 87 Del Mar, California	3N	3E	1	N½	0124765

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mr. Roy H. Hoffman, Sr.,	8423 Eglise Avenue Rivera, California	3N	3E	1	N½	0124855
Mr. Eddie B. Collins,	11913 Laurel Avenue Whittier, California	3N	3E	1	N½	0124859
Mr. Roy H. Hoffman, Jr.,	8423 Eglise Avenue Rivera, California	3N	3E	1	N½	0124862
Mr. Albert L. Steinhouse,	435 Millard Court Pasadena 3, California	3N	3E	1	N½	0124863
Mr. William T. Adams,	8692 N. Ventura Avenue Casitas Springs, California	3N	3E	1	N½	0124935
Mr. William Adams,	8692 N. Ventura Avenue Casitas Springs, California	3N	3E	1	N½	0124989
Mr. William P. Bauer,	9801 Wheatland Avenue Sunland, California	3N	3E	1	N½	0124990
Mr. Herman S. Podeszwa,	11743 Emery Street El Monte, California	3N	3E	1	N½	0125001
Mr. Paul B. Wallace,	727 W. 95th Street Inglewood, California	3N	3E	1	N½	0125020
Mr. Miles H. Nabors,	11800 Volunteer Norwalk, California	3N	3E	1	N½	0125125
Mr. Samuel R. Sauer,	14715 Jalisco Road La Mirada, California	3N	3E	1	N½	0125126

Name	Address	Twp.	Rge.	Sec.	Sub.	Land Office Serial No.
						Los Angeles
Mr. Calvin R. Wagher,	369 Wisconsin Avenue Long Beach 14, California	3N	3E	1	N½	0125129
Mr. James T. Cole,	14715 Jalisco Road La Mirada, California	3N	3E	1	N½	0125134
Mr. Robert E. Freeman, Jr.,	448 N. Sunflower, Covina, California	3N	3E	1	N½	0125139
Mr. Samuel E. Morse,	17018 Berendo Avenue Gardena, California	3N	3E	1	N½	0125444
Mr. Sidney F. Henderson,	3634 Senarac Long Beach, California	3N	3E	1	N½	0125587
Miss Virginia Winship,	6347 Arbutus Avenue Huntington Park, California	3N	3E	1	N½	0125750
Mr. Austin B. Peeples,	1421 23rd Street Santa Monica, California	3N	3E	1	N½	0132995
Mr. Ronald R. Sliter,	525 W. Baseline San Bernardino, California	3N	3E	2	S½	0121623
Mr. Gustaf A. Anderson,	4537 N. Livia Avenue Rosemead, California	3N	3E	2	S½	0123468
Mrs. May M. Pettengill,	409 "G" Street, P. O.P. O. Box 385, Eureka, California	3N	3E	2	S½	0123814
Mr. Bert Pettengill,	Post Office Box 385, 409 "G" Street, Eureka, California	3N	3E	2	S½	0124193
Mr. George Fujita,	1936 Stoner Avenue Los Angeles 25, California	3N	3E	2	S½	0124336

In reply refer to:

Los Angeles 097210
0117081
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 19, 1958

Certified Mail
Return Receipt Requested

DECISION

George R. Maness : Small Tract Leases
Luella B. Coe :
:

Decisions Affirmed

George R. Maness and Luella B. Coe have appealed from separate decisions of the Manager, rejecting their applications for renewal of small tract leases. The applications were rejected for the stated reasons, the appellants did not place the required improvements on the land and thereby qualify to apply for purchase of the tracts and did not establish that their failure to do so was justified.

Where an application for renewal is timely filed but the required improvements have not been placed on the land, a renewal may be approved upon a satisfactory showing that the failure to construct improvements is justified and that nonrenewal of the lease would work an extreme hardship on the lessee. Henry Offe, 64 I.D. 52 (1957).

In the instant cases we find there was ample time in which to construct the required improvements and the reasons offered by the appellants are not deemed adequate to excuse their noncompliance with the terms of the lease. 1/

The fact that Maness was not in the vicinity of the land by reason of his employment in Salt Lake City does not excuse the appellant of the obligation imposed by the lease to construct improvements, since there was no requirement that he do the work himself. Russell L. Coe, A-27527 (January 24, 1958).

1/ Each appellant agreed under section 2(a) of the lease, to construct upon the land substantial improvements appropriate for the use for which the lease was issued, i.e. cabin site.

Since neither appellant placed any structure on the leased land or expended any time or money toward development of the tracts, nonrenewal of the leases would not be an extreme hardship for either lessee. Evelyn Adams Lyon, A-27245 (December 28, 1955)

The decisions of the Manager are affirmed.

George R. Maness and Luella B. Coe are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Drew

Attachment

DISTRIBTUION

Mr. George R. Maness (Certified Mail)
Mrs. Luella B. Coe (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:

Los Angeles 059877
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 27, 1958

Certified Mail
Return Receipt Requested

DECISION

Otto Read Martine : Small Tract

Manager's Decision Affirmed

Mr. Martine has appealed from a decision of the Manager, rejecting his application to purchase for the stated reason that the improvements placed on the tract during the term of the lease and the two renewal terms are inadequate for residence purposes.

The original lease was issued on October 31, 1945, for a five year term for homesite purposes. Two renewal leases were issued thereafter, and the last renewal lease expired by its terms on October 30, 1952.

The application to purchase was filed on January 15, 1954, some fourteen months after the expiration of the last renewal of the lease. On January 12, 1953, Fred Milton Stadler filed small tract offer, Los Angeles 099978 for the land in issue.

The appellant asserts that he has complied with the terms of his lease and that the building has been approved by the San Bernadino County Building Department.

In Albert H. Dobry et al., 64 I.D. 116 (1957), the Department held that in the absence of intervening rights, a small tract purchase application filed within a reasonable time after the expiration of the lease, may be considered on its merits. In Dobry the application to purchase was filed twenty-five days after the expiration of the lease and was deemed to have been filed within a reasonable time. However, the delay of some 14 months in filing the application and the presence of an intervening application preclude consideration of the application to purchase on its merits. Cf. James Dewey Swearingin, Anchorage 024647 (May 1, 1958).

Moreover, the only improvements that may be considered in determining compliance with the lease are improvements placed upon the land before the lease expired. Cf. Cecil R. Vaughn, A-27477 (October 24, 1957). The record indicates that the improvements were placed on the land after the expiration of the most recent renewal lease granted to the appellant.

For the reasons stated, the Manager's decision is affirmed.

After this decision becomes final, the Manager will afford the appellant a reasonable time within which to remove those improvements which can be removed without substantial damange to the improvements or to the land. Any further disposition of the land will be subject to the reimbursement of the appellant by the person acquiring the land for the reasonable value of the permanent improvements which are left on the land and which will be of value to him. Cf. Keith Specking et al., A-26190 (July 24, 1951)

Mr. Otto Read Martine is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR, Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Martine, the adverse party to be served is:

Mr. Fred Milton Stadler
8305 East Lyndora Avenue
Downey, California

For the Director:

A H Kerr

Enclosure

DISTRIBUTION:

Mr. Otto Read Martine
Mr. Fred Milton Stadler
Lands Staff Officer
Appeals List No. 1
JHO'D

In reply refer to:
Los Angeles 083869
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 29, 1958

DECISION

Carl Allen Ryan : Small Tract

Case Remanded

Mr. Ryan has appealed from a decision of the Manager rejecting his application for a second renewal of his small tract lease for the stated reason that " * * * the required improvements should have been complied with during the existing lease period."

The appellant was issued a lease, effective July 26, 1950, for a five year term, for a small tract to be used for cabin site purposes. The lease was renewed thereafter for one year upon the appellant's representation that he has erected a concrete floor slab on the land. The timely filed application for a second renewal alleges the construction of a reinforced concrete foundation, floor slab, framing and diagonal sheeting for a 15 by 24 foot cabin, costing $900.00. Subsequent to the Manager's decision, in his appeal, Mr. Ryan alleges that he has done additional work than shown in his application including building a road, laying another concrete slab foundation, and that he has all of the material on the site necessary to complete the cabin "in a good and workmanlike manner." The appellant has submitted pictures to support his allegations.

In view of the supplemental data offered by the appellant, it now appears that the lessee may have shown sufficient good faith toward placing satisfactory improvements upon the tract in conformance with the lease requirements. The appellant has stated that an error made by him as to the original boundary of the tract, and the rocky, steep terrain have caused him to be delayed in completing the cabin. There may be justification for granting his requested renewal. Cf. Joseph L. Kirg, A-26843 (December 18, 1953). The record indicates that failure to issue a new lease may work an extreme hardship on him. Cf. Henry Offe, 64 I.D. 52 (1957).

Accordingly, the case record is remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles for a field examination to determine whether substantial compliance with the lease terms has been had. If it is determined that the appellant has substantially complied with the lease terms, final certificate shall issue, if all else be regular. If it is determined that the improvements on the land do not constitute substantial compliance with the lease terms, but that the allegations of the appellant afford a sufficient predicate for a renewal of the lease, he should be granted a renewal lease for at least one year from date of issuance to permit him to comply with the improvement requirements of the lease.

For the Director:

Enclosure

Distribution:

Mr. Carl Allen Ryan (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

In reply refer to:

Los Angeles 060524
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 2, 1958

Certified Mail
Return Receipt Requested

DECISION

James R. Walsh (Formerly : Application for Purchase of
James J. Russell)[1] : Small Tract

Decision Affirmed

James R. Walsh has appealed from a decision of the Manager, rejecting an application to purchase pursuant to his small tract lease for the stated reason that he failed to comply with the terms of the lease with respect to the construction of improvements.

Although the appellant stated in the application to purchase filed February 5, 1957, that a cabin[2] had been erected on the land, it was found upon field examination conducted August 27, 1957, that the improvements placed on the land consisted chiefly of a cement slab. Photographic evidence supports the report as to the nature of the improvements. Such improvements fail to show compliance with the terms of a small tract lease. James E. Wilkinson et al., Los Angeles 080606 (July 9, 1958).

Mr. Walsh states on appeal that he is a disabled veteran and submits a letter from a contractor with whom he contracted in February 1957 to have a dwelling erected on the tract. The contractor's letter, dated November 30, 1957, states he was obliged to postpone the work contracted for until the winter months because of having suffered a heat stroke. Notwithstanding these assertions, we find that the appellant had ample time in which to have the required improvements constructed on the land. James E. Wilkinson et al., supra.

---

[1] Appellant states his name was legally changed from James J. Russell to James R. Walsh in 1949.

[2] The lease contemplated the use of the land as a cabin site.

The Manager's decision is affirmed.

If the land is disposed of, the person acquiring the land will be required to compensate the appellant for the fair value of his improvements, if the improvements are of value to such person.

Mr. Walsh is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dunn

Attachment

DISTRIBUTION:
Mr. James R. Walsh (Certified Mail)
Mr. H. Milhap (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MAG

42059

In reply refer to:
Los Angeles 0138341
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 4, 1958

Certified Mail
Return Receipt Requested

DECISION

Charles K. Stephan : Small Tract Lease

Decision of Manager Affirmed

Charles K. Stephan has appealed from a decision of the Manager rejecting his application for renewal of his small tract lease for the stated reason that the appellant did not place required improvements on the land and thereby meet the qualifications for purchase of the tract, and he failed to show that his noncompliance with the construction requirements of the lease was justified.

By section 2(a) of his lease, issued March 1, 1956, the lessee agreed to construct upon the land during the term of the lease substantial improvements, appropriate for the use for which the lease was issued.

The appellant asserts, without corroboration, that he was prevented from constructing improvements within the term of the lease by lack of finances and by reason of his employment and reserve duty elsewhere, but that he is now in a position to make improvements on the tract as he has been transferred and is living and working in the area. The fact that he was not in the vicinity of the land by reason of his employment and reserve duty, is not sufficient justification or cause for appellant's failure to comply with the lease terms, since there was no requirement that he do the work himself. Russell L. Coe, A-27527 (January 24, 1958). A small tract lessee who has failed to comply with the requirements of his lease that substantial improvements be made during the term of the lease, is not entitled to a renewal of his lease. Cecil R. Vaughn, A-27477 (October 24, 1957).

The appellant has not established that his failure to meet the requirements for purchase of the tract was justified in the circumstances. Furthermore, since no structure was placed on the land and the appellant has not expended any time or money toward development of the tract, nonrenewal of the lease would not be an extreme hardship for him. Evelyn Adams Lyon, A-27245 (December 28, 1955).

The decision of the Manager is affirmed.

Mr. Stephan is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

Distribution:

Mr. Charles K. Stephan (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

In reply refer to:

Los Angeles 0146902
0146903
0101241
0101242
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 4, 1958

Certified Mail
Return Receipt Requested

DECISION

Donald E. Nafius : Small Tract Applications
:
Mildred L. Stratton :

Decisions of Manager Affirmed

The above-identified parties have appealed from decisions of the Manager, which rejected their respective small tract applications, for the stated reason that the lands sought were embraced in prior terminated small tr leases and therefore not subject to further application until such time as offered at public auction or in a special drawing procedure.

The lands were formerly leased under small tract leases Los Angeles 0101241 and 0101242, both of which terminated on March 11, 1956.

The appellants contend in their appeals that the lands were represented to them by Government personnel as available for leasing with the option to purchase; that they made application to lease the land in good faith; that in addition to using the tracts for residential purposes for their families, they planned to utilize the combined area of the tracts applied for as a recreation and small camping area for Boy Scouts and Camp Fire Girls, with which organizations the appellants are affiliated.

The applicable regulation, 43 CFR, 1957 Supp., 257.18(a) provides in pertinent part:

> "In any of the following circumstances, a tract shall not be subject to further application until an order is issued specifying the time and manner in which the tract shall be made available for lease or purchase: (1) When a small tract lease has terminated, been relinquished or canceled for any reason; * * *"

This regulation, which is binding upon both the appellants and this Bureau, was promulgated in the Federal Register on January 15, 1955. 20 F. R. 366. "Just as everyone is charged with knowledge of the United States Statutes at Large, Congress has provided that the appearance of rules and regulations in the Federal Register gives legal notice of their contents. 49 Stat. 502 44 U.S.C. sec. 307." Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)

The provisions of the regulation are plain and the Department has consistently stated that reliance by a private person on information furnished him by Government personnel cannot operate to vest in such person a right unauthorized by law. R. M. Harris, A-26215 (July 24, 1951). Therefore, even if the appellants had been misinformed by the Land Office as to the availability of the land, that would not entitle them to any right to leases therefor.

Neither the appellants nor any other persons are entitled to lease or purchase the tracts in question until the lands, by order, are made available for lease or purchase. The decisions of the Manager are affirmed.

Mr. Nafius and Mrs. Stratton are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Attachment

DISTRIBUTION:
Mr. Donald E. Nafius (Certified Mail)
Mrs. Mildred L. Stratton (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
MAG

appeal to Sec
Ⓐ
Affirmed A-27883 4-20-58

In reply refer to:

Los Angeles 0138698
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 8, 1958

Certified Mail
Return Receipt Requested

DECISION

Amandus James John Jansen : Small Tract

Manager's Decision Affirmed

Amandus James John Jansen has appealed from a decision of the Manager rejecting his application for the renewal of his small tract lease for the stated reasons that no valuable, permanent improvements have been placed on the leased tract and the applicant's reasons for failure to comply were deemed inadequate.

The lease was issued effective on March 1, 1956, for a one year term, to be used for residence purposes, with an option to purchase. On February 25, 1957, appellant filed with the Land Office his application for a renewal of the lease, stating therein that his only improvement upon the land was a survey and the staking out of the proposed dwelling.

Appellant appeals from the decision, relating that the reason he did not have the improvements placed upon the land was because of illness, from which he has recovered. Appellant relates that another person was going to help him do the necessary work, but the latter was not informed that the work must be done within the lease term.

The appellant has failed to show that his failure to meet the requirements for the sale of the tract is justified (Cf. Florence F. McMahon, Los Angeles 091195 (June 16, 1958)) and that non-renewal of his lease would result in an extreme hardship to him. Since no valuable improvements have been erected on the land, and the appellant has expended $35.00 for a survey and the filing fee and rentals, the non-renewal would not cause him a severe loss. Jimmie Deones, A-25739 (February 11, 1958)

Accordingly, the decision of the Manager is affirmed.

Mr. Amandus James John Jansen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

GH. Irwin

DISTRIBUTION:
Mr. Amandus James John Jansen (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

42059

appeal to Sec
affirmed A-27866 3/31/59
list 4/6/59

In reply refer to:
Sacramento 050156
Sacramento 050157
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 8, 1958

Certified Mail
Return Receipt Requested

DECISION

Alexander W. Whyte : Small Tract
Richard L. Allen :

Manager's Decision Affirmed

Alexander Woolterton Whyte and Richard Lee Allen have appealed from a decision of the Manager, rejecting their small tract applications for lands in the same subdivision *. The decision recited that John P. Andrews filed a public sale application (Sacramento 051970) for the subdivision in issue and rejected the two small tract applications for the reason that the topography of the land and the problems of administration which would result from a small tract classification of the area rendered the tract proper for disposal under the public sale application.

The record indicates that the vast majority of the subdivision in issue is steep, mountainous and unsuitable for homesite development at a reasonable cost, and that the two tracts sought by appellants include nearly all of the land which could reasonably be utilized for small tract development. There is no water available, and the land consists of rolling to steep hills and is unsuitable for cultivation. Mr. Andrews owns the adjoining land and operates a turkey ranch thereon. None of the land is required for government retention.

The appellants assert that they filed their applications prior to the public sale application, that they desire the land for recreational purposes, and that the land in their application is suitable for that use.

The public sale applicant as an adverse party has filed an answer to each appeal, and he has requested a hearing.

---

* T. 29 S., R. 13 E., M. D. M., California.
Section 11, NW¼SW¼

Where a tract of public land is suitable for disposition in its entirety or possibly as several small tracts, and there is no assurance that the Department would be able to dispose of all of the tracts and would be left with the burden of administering small fragments of public land, it is in the public interest to dispose of the area in its entirety as one transaction. James J. Kendrew, A-27145 (April 8, 1955).

The decision of the Manager is affirmed. In view of the foregoing, no useful purpose would be served by a hearing. Cf. Margaret A. Andrews, et al., 64 I. D. 9 (1957). Mr. Andrews's request for a hearing is denied.

Alexander Woolterton Whyte and Richard Lee Allen are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Alexander Woolterton Whyte or Richard Lee Allen, then the adverse party to be served is: John P. Andrews, Star Route, Box 5, Park Hill, Santa Margarita, California.

For the Director:

GH Dun

Enclosure

Distribution:

Mr. Alexander W. Whyte (Certified Mail)
Mr. Richard L. Allen (Certified Mail)
Mr. John P. Andrews (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
JHO'D

42059

appeal to Sec.
affirmed A-27916 - 5-19-59

In reply refer to:
Sacramento 050162
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 7, 1958

Certified Mail
Return Receipt Requested

DECISION

Regina G. Owen : Small Tract

Manager's Decision Affirmed

The above-named party has appealed from the decision of the Manager which rejected her small tract application for the reason it was determined that the land applied for is more suitable for disposal under the public sale law as part of a larger isolated tract of public land than for small tract development.

The records show that the land in issue comprises five acres located within a half section of public land, which half section is completely isolated from other public land. The land in the half-section is generally mountainous and rough, and not suitable for small tract development and there is little level ground. The record further shows that there are no other applications for small tracts within six miles of the land involved, and there is no particular demand for small tract development in this area. The half section has been classified as being suitable for disposal under the public sale law.

The appellant asserts that she should be allowed to lease and purchase the land in issue under the Small Tract Act, and if and when she obtained title thereto she would be in a position to purchase the remaining 315 acres in the half-section.

She also asserts, and the records show, that the land applied for is part of a placer mining claim for which she has filed a relinquishment, on the condition that it will take effect only when the land has been classified for small tract development and a lease issued to her. 1/

1/ The relinquishment of the placer claim being conditioned on the classification of the land and issuance of a lease for a small tract in the circumstances is not effective. The validity of the claim must be determined before the land may be disposed of under the public sale laws. Adverse proceedings should be brought against the claim, if the facts so warrant.

It is proper, however, to refuse to classify a portion of a tract for small tract disposal where the greater part of the tract is mountainous and rough, and there is no assurance that the remainder of the tract could be disposed of at once under the public land laws and the tract in its entirety has been classified for disposal under the public sale law. Cf. James J. Kendrew, A-27145 (April 8, 1955).

Accordingly, the Manager's decision is affirmed.

Regina G. Owen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dun

Enclosure

Distribution:

Regina G. Owen (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

43552

In reply refer to:
Los Angeles 0137929, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 8, 1958

DECISION

Diana Lee Allen et al. : Small Tract Applications

Cases Remanded

Diana Lee Allen and two other small tract applicants 1/ have appealed from separate decisions of the Manager, rejecting their applications for the stated reason that the lands sought for small tract lease were classified as suitable for mining, grazing or disposal under the public sale law, and were found to be unsuitable for small tract development because of their mineral character and eroded topography.

Identical appeals were filed by the appellants, stating revisits to the lands confirmed that there was no apparent evidence of mining activities thereon, nor do the lands appear suitable for grazing. The appellants assert the lands are in fact suitable for homesites but they present no evidence to substantiate their assertions.

The records indicate there may be mining claims affecting the status of the lands. Therefore, the cases are remanded for further consideration as to (1) whether the lands are physically suitable for small tract classification apart from the question of the existence of any mining claims thereon, (2) whether the lands are valuable for mineral resources, (3) whether small tract development represents a higher utilization of the lands than for grazing or disposal under the public sale law or any other type of use; and if all is favorable, (4) whether any mining claims upon the lands are valid.

1/

Diana Lee Allen	Los Angeles 0137929
Harold Gordon Reynolds	Los Angeles 0137930
Charles Leonard Reeder	Los Angeles 0137991

The cases are therefore returned to the Manager, through the Assistant to the Bureau's State Supervisor at Los Angeles, California, for action consistent with this decision.

For the Director:

G. H. Dixon

DISTRIBUTION:

Mrs. Diana Lee Allen (Regular Mail)
Mr. Harold Gordon Reynolds (Regular Mail)
Mr. Charles Leonard Reeder (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MAG

In reply refer to:
Los Angeles 084904
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 27, 1958

DECISION

Dennis Copeland Smith : Small Tract Lease

Case Remanded

An appeal has been filed in behalf of Dennis Copeland Smith [1] from a decision of the Manager, rejecting his application for second renewal of a small tract lease because his reasons for failure to comply with the terms of the lease with respect to the construction of improvements were considered insufficient to justify further renewal.

The lease was obtained by Dennis Copeland Smith through an assignment approved by the Land Office Manager on April 25, 1956. Although the assignment instrument indicated the original lessee made expenditures in having the tract surveyed, in constructing roads and running an electric power line to the tract, there was no indication that suitable improvements had been constructed on the land, [2] which is a prerequisite to approval of an assignment of a small tract lease (43 CFR, 1955 Supp., 257.12). However, this procedural defect is not material to the principal issue involved here.

The appeal states that leave from the United States Air Force which was to have been granted the appellant and during which he planned to accomplish the required construction, was canceled, and the starting date of leave subsequently granted was beyond the date the lease was due to expire. It is alleged that up to the time the renewal application was filed Mr. Smith had expended a substantial sum in permenent improvements on and immediately adjacent to the tract, he having assumed the expenses of the original lessee. Subsequently, a building permit was applied for and building materials obtained, raising the total of his investment in the property in excess of $800. Mr. Smith indicated he would be separated from military service within the term of the renewal applied for.

---

[1] Appeal filed in behalf of Dennis Copeland Smith by his father. 43 CFR 1.3(b)(3).

[2] Lessee agreed under section 2(a) of the lease, to construct upon the land substantial improvements appropriate for the use for which the lease was issued, i.e., a cabin site.

Where an application for renewal is timely filed but the required improvements have not been placed on the land, a renewal may be approved upon a satisfactory showing that the failure to construct improvements is justified and that nonrenewal of the lease would work an extreme hardship on the lessee. Cf. Henry Offe, 64 I.D. 52 (1957).

The record shows that at the time Dennis Copeland Smith received the lease by assignment there remained less than three months of the two-year term of the renewal lease issued July 11, 1954. For this reason and because it appears the appellant has an investment in improvements of a nature which he may not economically salvage, and since the record indicates there are no intervening applications for the land, the case will be remanded for a determination of the factual situation. An investigation should be made to ascertain the extent of the improvements placed upon the land and whether in fact circumstances beyond his control prevented Mr. Smith from erecting improvements to meet the lease requirements and thereby qualify to apply for purchase of the land.

The case is accordingly returned to the Manager, through the Assistant to the State Supervisor of this Bureau at Los Angeles, California, for further appropriate consideration consistent with this decision.

For the Director:
John B. Piccolo

DISTRIBUTION:
Major Roswald Francis Smith (Regular Mail)
Mr. Dennis Copeland Smith (Regular Mail)
Mr. Wilmoth C. Mack (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MAG

43552

In reply refer to:

Los Angeles 0146287 etc 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 5, 1958

Certified Mail
Return Receipt Requested

DECISION

Bonnie Ruth Hoagland et al. : Small Tract Applications
:
:

Decisions of the Manager Affirmed

Bonnie Ruth Hoagland and nine others have appealed from decisions of the Manager which rejected their small tract applications for the stated reasons that the applications cover a part of a rough and mountainous isolated public land tract of 240 acres of which only about 40 acres are physically suitable for small tract purposes, and because there is no means of public access to the lands.

The record shows that the 240 acre tract covers an area occupied by Piute Butte. Though the topography along the west slope of the Butte, the area occupied by the subject applications, is described in the field report as relatively level to medium sloping, the surface of the land is interspersed with huge boulders and rock outcroppings.

The Department has held that small tract applications for rough and inaccessible lands are properly rejected. Harry Carson et al., A-27289 (May 28, 1956); or for lands otherwise unsuitable for small tract purposes because of adverse physical features of the land. Cf. Mrs. Jessie M. Rowland et al., A-27354 (August 13, 1956). It is our view that small tract applications for select areas of an isolated tract should be rejected even thoug the individual tracts under application may be suitable for occupancy purposes, if the disposal of the areas suitable for small tract purposes would leave the Bureau with the administration of scattered, irregularly shaped, public land tracts for which there is no forseeable market demand or public need.

In similar cases the Department has held that the lands are more properly classified for disposal in a single transaction. Cf. James J. Kendrew, A-27145 (April 8, 1955). The foregoing rule appears to apply here. Therefore, the decisions of the Manager are affirmed.

1/ See Appendix.

Bonnie Ruth Hoagland and the other parties listed in the Appendix are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Drew

Enclosure

DISTRIBUTION:

Thomas J. Beaudet, Attorney at Law (Certified Mail)
Each Small Tract Applicant (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CFG

APPENDIX

Name	Serial No. (Los Angeles)
Mr. Bonnie Ruth Hoagland	0146287
Mr. Thomas C. Durham	0146345
Mr. Samuel C. Durham	0146418
Mrs. Grace F. MacDonald	0146414
Mr. Paul Theodore Heinevetter	0146476
Mrs. Maridelle Brewer Wright	0146710
Mr. Charles B. Kepner	0146380
Mrs. Betty Jane Herman	0146725
Mr. Robert D. Abbey	0146726
Mr. Silvio Donchi	0146475

In reply refer to:

Los Angeles 0113623
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 13, 1958

Certified Mail
Return Receipt Requested

DECISION

Oscar I. Stordalen	: : :	Small Tract

Manager's Decision Affirmed

Mr. Stordalen has appealed from a decision of the Manager rejecting his application for the renewal of a small tract lease for the reason that he did not establish that his failure to meet the requirements for sale of the land is justified and that non-renewal would result in an extreme hardship to him.

The appellant was issued a small tract lease for a three year term, effective August 25, 1954. The land was to be used for a residence site and the appellant agreed to place a cabin on the tract. The appellant has not improved the small tract, but he did file a timely application to renew the lease asserting that other demands on his time would make it impossible for him to build a cabin on the land within the lease term.

The appellant states as his reasons for appealing that he is at present unable financially to improve the land, and "may be in better shape next year."

The appellant's contentions do not meet the requirements for renewal set forth in 43 CFR, 1957 Supp., 257.15(c). The appellant is not entitled to a renewal unless he could show that nonrenewal would work an extreme hardship on him. Herbert Rae Norris. Anchorage 025943 (July 23, 1958). The loss of the small investment made by the appellant in the lease for rental and filing fees does not constitute such a loss as would be an extreme hardship on him. Jimmie Deones, A-27539(February 11, 1958).

The Manager's decision is affirmed.

Mr. Stordalen is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal, there must be strict compliance with the regulations.

For the Director:

A. H. Dunn

Enclosure

DISTRIBUTION:

Mr. Oscar I. Stordalen (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

In reply refer to:
Sacramento 054131
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 17, 1958

DECISION

Eva R. Sears : Small Tract

Case Remanded

Eva R. Sears has appealed from a decision rejecting her small tract lease application because the tract is not available for disposal until an order is issued specifying the time and manner in which the tract will be made available for lease or purchase under the Small Tract Act.

The records reveals that the appellant filed an amended small tract application, Sacramento 050243, on August 15, 1955. On September 14, 1955, Small Tract Classification Order California No. 460 was issued, segregating the land, and other land, from all forms of appropriation except as to small tract applications and applications under the (mineral) leasing laws. The order appraised each tract at a rental value of $30.00 for three years. On September 28, 1955, a decision was issued requiring the appellant to pay an additional $15.00 for rent * specified by the classification order within 30 days or to appeal. The appellant did not comply with that decision, nor appeal, and the case was closed. The appellant filed the small tract lease application now on appeal on June 6, 1957, over a year and half after the classification.

Where a party files a new small tract application or amends an existing application, her rights, if any, must commence from the time the new or amended application is received by the land office. Cf. Annie Davies, 34 L.D. 539 (1906). On the date she filed her latest small tract lease application, June 6, 1957, the land was subject to the terms of the classification order. Paragraph numbered one of the classification order proceeded as follows:

---

* The decision in accordance with the classification order required the appellant also to amend her application form to show the land description contained in the original application, which is the land applied for in the case on appeal.

> "1. Classification of the above-described lands by this order segregates them from all appropriations, including location under the mining laws, except as to applications under the Small Tract Act and applications under the leasing laws."

It is clear from the above that the order did not segregate the land from small tract filings. Accordingly, the decision of the Manager is reversed and the case remanded to the Manager through the Bureau's Assistant to the State Supervisor to be held suspended pending adjudication of any prior small tract applications for the land.

For the Director:

A. H. [illegible]

DISTRIBUTION:

Mrs. Eva R. Sears (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

45092

In reply refer to:

Sacramento 052400
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 17, 1958

DECISION

Paul O. Scott ::: Small Tract Application
:::

Case Remanded

Paul O. Scott has appealed from a decision of the Manager rejecting his small tract application for the stated reason that the land applied for is "* * *not subject to further application until an order is issued specifying the time and manner in which the tract shall be made available for lease or purchase."

The tract in issue was classified for lease, for residence purposes only, by Classification Order No. 466 of January 4, 1956. The classification was made for the benefit of the small tract applicants whose applications were of record on the date of classification. One of these applicants was George A. Petersen. The record shows that Mr. Petersen did not conform his application to the specifications of the classification order within the time allowed by the Manager, and that his case was closed on July 31, 1956. The appellant's application for the same land was filed on June 13, 1956.

The classification order provided for subsequent applications under the Small Tract Act and the mineral leasing laws. The tract was therefore subject to further small tract applications. The appellant's application was properly accepted by the Manager and it should have been considered on its merits after the senior application was closed. Cf. Roy H. Davis, A-27359 (August 15, 1956).

Accordingly, the case is returned to the Manager through the Bureau's State Supervisor at Sacramento for further appropriate action.

For the Director:

DISTRIBUTION:
Mr. Paul O. Scott (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

45092

In reply refer to:
appeal to Sec
Los Angeles 0137437
affirmed A-27955
5.04g
6-15-59

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 21, 1958

Certified Mail
Return Receipt Requested

DECISION

Harold Ripley : Small Tract

Acting Manager's Decision Affirmed

Mr. Ripley has appealed from the Acting Manager's decision rejecting his small tract application for the stated reason that the land is in the Sequoia National Forest, and not subject to disposal under the Small Tract Act, 43 U.S.C. 682a.

The records show that the township was withdrawn for the Tulare Forest Reserve on November 5, 1891, and the Sierra Forest Reserve (name changed to Sequoia National Forest on July 1, 1908) by proclamations of February 14, 1893, April 20, 1908, and March 2, 1909. The land has never been restored.

The appellant asserts that the character of the land is such that its best use would be as a site for residence rather than as part of the national forest.

The Small Tract Act does not apply to reservations such as national forests. 43 CFR, 257.1. There is no authority to dispose of the land in issue under that act. Cf. Arwin P. Curran, Sr., A-27474 (August 20, 1957). Therefore, the small tract application was properly rejected.

Accordingly, the decision of the Acting Manager is affirmed.

Mr. Ripley is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

Distribution - Page 2

DISTRIBUTION:

Mr. Harold Ripley (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

45092

In reply refer to:
Los Angeles 097927
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 21, 1958

DECISION

Katherine A. Coger : Small Tract

Case Remanded

Katherine A. Coger has appealed from a decision of the Manager, dated December 16, 1957, which rejected her second small tract lease renewal application for the stated reason that no additional improvements had been constructed on the tract since the granting of the first renewal, and the applicant had not shown that failure to make the improvements was justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on her.

The record shows that the renewal lease expired by its terms on January 22, 1957. The application for a second renewal lease was received in the Land Office on January 24, 1957. Therefore, the application was subject to rejection as being filed late.

Nevertheless, on July 10, 1957, the Manager requested Mrs. Coger to explain why the renewal application was not filed prior to the expiration date of the lease. It was further stated that her application would " *** be suspended awaiting final instructions as to the action that is to be taken on untimely filings ***."

Mrs. Coger responded to this request by stating she had acted in good faith and mailed the renewal application a week before the lease expiration date. In a subsequent letter, dated December 8, 1957, the appellant stated that a cottage had been constructed on the land. She also requested forms to apply for purchase of the tract. On December 16, 1957, the Manager rejected the renewal application which was filed some eleven months prior to that time.

An appeal was timely filed. In essence the appellant stated that she acted, because of no information from the Manager to the contrary, on the assumption that the renewal application was timely filed and consequently a cabin was started in April of 1957. She was not apprised of the rejection of the renewal application until after the cottage was completed. Ten days after receipt of notice of the rejection of the application, the appellant filed an application for purchase of the tract.

From the evidence submitted by Mrs. Coger in the appeal and purchase application it appears that the improvements may meet the requirements for application to purchase. In the absence of intervening rights, further consideration may be given to the application to purchase.

Accordingly, the case is remanded to the Manager through the Bureau's Assistant to the State Supervisor at Los Angeles for further appropriate consideration.

For the Director:

DISTRIBUTION:
Mrs. Katherine A. Coger (Regular Mail)
Asst. to the State Supervisor (Los Angeles) w/case file LA 097927
Lands Staff Officer (1)
Appeals List No. 1
EVJ

45092

In reply refer to:
Sacramento 048826
5.04g

November 21, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

	:	
Sverre M. Backe	:	Small Tract
	:	

Manager's Decision Affirmed

Mr. Backe has appealed from a decision of the Manager rejecting his application to renew a small tract lease for the stated reasons that the appellant did not construct improvements on the land and thereby meet the requirements for purchase of the tract, and had not established that his failure to do so was justified and that nonrenewal of the lease would work an extreme hardship on him.

The appellant's lease was issued for a term of three years, effective November 16, 1954 and stated that he was entitled to "purchase it after the expiration of 1 year from the date of this lease, provided he had made the improvements herein required, and fully complied with the terms and conditions of this lease * * *." The lease contemplated the erection of a building suitable as a residence.

The appellant asserts that his employment has kept him outside of the United States during the lease term, and that he will probably not return for another three years, and states that at that time he will construct the improvements because he wishes to personally supervise the construction.

The Department has held that inability of the lessee to be personally present on the tract during the lease term does not relieve him of the obligations of his lease. Russell L. Coe, A-27527 (January 24, 1958). As a member of the foreign service at the time he acquired the lease, the appellant was aware of the possibility that he could be transferred from the area at any time, so the fact that this eventuality transpired cannot be considered an unforseen event. Since no permanent structures or improvements were constructed on the tract, the loss of the small amount expended by the appellant in rentals and filing fees on the tract and in locating the tract cannot be regarded as a severe loss because of nonrenewal of the lease. Jimmie Deones, A-27539 (February 11, 1958). The application for renewal was properly rejected. Herbert Rae Norris, Anchorage 025943 (July 23, 1958).

Accordingly, the decision of the Manager is affirmed.

Mr. Backe is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Kerr

Enclosure

DISTRIBUTION:

Mr. Sverre M. Backe (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
JHO'D

45092

appeal to Sec
affirmed A-27980
8-3-59

SMALL TRACTS *5 Renewal of Lease

Where an application for renewal of a small tract lease is not filed within the time limit imposed by the regulations, and the improvements placed upon the land consist chiefly of a cement slab, the application for renewal is properly rejected.

Zanna M. Osgood, Los Angeles 0112744 (December 8, 1958)

In reply refer to:

Los Angeles 0112744
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 8, 1958

Certified Mail
Return Receipt Requested

DECISION

Zanna M. Osgood : Small Tract Lease
:
:

Decision of Manager Affirmed

Zanna M. Osgood has appealed from a decision of the Manager which rejected her application for renewal of her small tract lease for the stated reason that the renewal application was not filed prior to the expiration of the lease.

Although the lease terms and the regulations in effect when the lease was issued required the appellant to apply for a renewal not less than 60 days before the end of the lease term, the appellant was entitled to the benefits of the regulations in effect at the end of the lease term, which required that she apply for a renewal before the expiration of the lease term. Henry Offe, 64 I.D. 52 (1957). Even this relaxed requirement was not met by the appellant.

In addition, the record discloses the appellant failed to make any progress toward constructing suitable improvements on the tract during the seven months' period which remained of the lease term after she acquired the lease through assignment. * A condition of the assignment approval was that the appellant agreed to be bound by the terms and provisions of the assigned lease. She thus agreed, by section 2(a), to construct upon the land substantial improvements appropriate for the use for which the lease was issued, i.e., a cabin site. The record shows that the appellant filed an application to purchase simultaneously with her application to renew. These documents were filed some 39 days after the expiration of the lease. Hence, the application to purchase, having been filed a reasonable time after the expiration of the lease may be considered on its merits. Albert H. Dobry et al.,

---

* The three-year lease, issued December 22, 1954, was obtained through an assignment approved by the Land Office Manager May 9, 1957.

64 I.D. 116 (1957). It appears the improvements placed on the land consist chiefly of a cement foundation or slab, laid prior to the appellant's acquisition of the lease. Such improvements fail to show compliance with the terms of a small tract lease, James E. Wilkinson, Los Angeles 080606 (July 9, 1958), and the application to purchase is rejected.

The appellant bases her failure to timely file application for renewal and her delay in building on the tract, on the fact that she was misinformed by a land locator. However, the lease provisions are clearly and specifically set forth in the lease. Ernest J. Van Loon, A-27087 (April 12, 1955).

The decision of the Manager is affirmed.

If the land is disposed of to another, the person acquiring the land will be required to compensate the appellant for the improvements if the improvements are of value to such person.

Mrs. Osgood is allowed the right of appeal to the Secretary of the Interior in accordance with regulations in 43 CFR, Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

G. H. Dunn

Enclosure

DISTRIBUTION:
Miss Zanna M. Osgood (Certified Mail)
Asst to SS (Los Angeles) w/case record, L.A. 0112744
Lands Staff Officer
Appeals List No. 1
MAG

SMALL TRACTS * 5 Renewal of Lease

* 6 Sales

An application for renewal of a small tract lease filed after expiration of the lease term is properly rejected. However, the renewal application may be treated as an application to purchase. Where the record indicates that improvements have been constructed on the land which may meet the purchase requirements embodied in the lease, the case will be remanded for processing of the application to purchase.

Mildred Jay Sun, Los Angeles 0110300 (December 9, 1958)

In reply refer to:

Los Angeles 0110300
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 9, 1958

DECISION

Mildred Jay Sun : Small Tract

Case Remanded

Mildred Jay Sun appealed from a decision of the Acting Manager, which rejected her application for renewal of her small tract lease for the reason that the renewal application was not filed prior to the expiration of the lease.

The Manager stated the appellant's application to renew the lease was filed six days after the lease had expired. The appellant did not dispute that her renewal application was filed at the time stated by the Manager. She explained the delay in filing was caused by the Post Office returning the application because of insufficient postage. This issue is governed by *H. P. Saunders, Jr.*, 59 I.D. 41 (1945), holding that a paper or document is filed only at the time when actually delivered to and received by a designated office.

The Manager's action in refusing to renew the appellant's lease because she did not file timely application for renewal was correct. Cf. *Minta Harper Dozier*, A-27221, November 17, 1955. However, the renewal application may be treated as an application to purchase and the latter may be considered on its merits. *Thomas G. Myers*, Carson City 024498 (May 6, 1958).

The record indicates that Mrs. Sun has constructed improvements on the tract which may meet improvement requirements of the lease.

Accordingly, the case is remanded for appropriate consideration of the application to purchase.

For the Director:

DISTRIBUTION:
Mrs. Mildred Jay Sun (Regular Mail)
Asst. to SS(Los Angeles)w/Case Record, Los Angeles 0110300
Lands Staff Officer
Appeals List No. 1
MAG

46567

SMALL TRACTS * 5 Renewal of Lease

An application for renewal of a small tract lease is properly rejected when it is not filed within the time required by the regulations, and where no improvements have been placed on the leased land.

Peter Rask, Jr., Los Angeles 0115955 (December 9, 1958)

In reply refer to:

Los Angeles 0115955
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 9, 1958

Certified Mail
Return Receipt Requested

DECISION

Peter Rask, Jr. : Small Tract

Decision of Manager Affirmed

Peter Rask, Jr., has appealed from a decision of the Manager, rejecting his application for renewal of his small tract lease for the stated reason that the renewal application was not filed prior to the expiration of the lease.

Although the lease terms and regulations in effect when the lease was issued required the appellant to apply for renewal not less than 60 days before the end of the lease term, he was entitled to the benefits of the regulations in effect at the end of the lease term, which required only that he apply for a renewal before the expiration of the lease. Henry Offe, 64 I.D. 52 (1957). The appellant's formal application was not filed in time to meet even the requirements of this amended, more liberal regulation (43 CFR 257.15a), and rejection of the application was proper. Cf. Minta Harper Dozier, A-27221 (November 17, 1955).

The appellant's application for renewal was not filed in the Land Office until October 2, 1957, whereas the lease expired by its own terms September 28, 1957. With respect to the appellant's contention concerning the delayed delivery by the post office of his application for renewal, it has been held that a paper or document is filed only at the time when actually delivered to and received by the Land Office. H. P. Saunders, Jr., 59 I.D. 41 (1945).

The appellant does not dispute that he placed no improvements on the tract during the term of the lease. [1] To support his request for renewal he explains that there was no public egress or ingress to the tract and he was obliged to negotiate with adjoining landowners and lessees for permission to cross their lands. He now proposes doing grading work on the land in his small tract, which would also benefit the contiguous land; on this basis the contiguous landowners or lessees would permit him the right-of-way or license to reach his leased land. A small tract lessee who has failed to comply with the requirements of the lease that substantial improvements be placed on leased land is not entitled to a renewal of his lease. Cf. Ernest J. Van Loon, A-27087 (April 12, 1955). Furthermore, each lease issued pursuant to the same classification order under which the appellant's lease was issued 2/ contained provisions for access to the leased land from other lands leased under the classification order.

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[1] The lease contemplated the use of the land as a cabin site.

The decision of the Manager is affirmed.

Mr. Rask is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A.H.

Attachment

DISTRIBUTION:

Mr. Norvin L. Grauf, Attorney for Appellant (Certified Mail)
Mr. Peter Rask, Jr., (Regular Mail)
Lands Staff Officer
Appeals List No. 1
MAG

2/ Small Tract Classification Order No. 92, dated October 15, 1948. 13 F.R. 7418.

SMALL TRACTS * 5 Renewal of Lease

* 6 Sales

An application for the renewal of a small tract lease filed after the expiration of the lease term is properly rejected but it may be treated as an application to purchase the tract. Where the record indicates that compliance with the improvement requirements of the lease may have been met, the record will be remanded for consideration of the application to purchase.

Phillip Ellis Carter, Los Angeles 0113150 (December 9, 1958)

In reply refer to:

Los Angeles 0113150
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 9, 1958

DECISION

Phillip Ellis Carter : Small Tract

Case Remanded

Phillip Ellis Carter appealed from a decision of the Acting Manager, which rejected his application for renewal of his small tract lease for the reason that the renewal application was not filed prior to the expiration of the lease. The application was filed 4 days after the expiration of the lease.

The appellant does not dispute that the renewal application was filed late, but explains that he had no copy of his lease, the lease never having been delivered to him; that he assumed the date of his lease to be the same as that of his father, who assisted him in the lease negotiations. A lessee, however, is presumed to know the date and terms of his lease, and the responsibility for such knowledge must rest upon him. Jimmie Deones, A-27539 (February 11, 1958). The Manager's action in refusing to renew the appellant's lease because he did not file timely application for renewal was correct. Cf. Minta Harper Dozier, A-27221 (November 17, 1955).

The record indicates that the appellant may have substantially complied with the lease terms by making the required improvements upon the land. The renewal application may be treated as an application to purchase. Francis Thurston Bussell, Los Angeles 0101920 (March 23, 1958).

The departmental regulation governing the filing of applications to purchase under small tract leases which include an option to purchase is not mandatory, but only directory, as to the time when an application to purchase is to be filed, and an application to purchase which is made within a reasonable time after expiration of the lease term, may be acted upon.* Albert H. Dobry et al., 64 I.D. 116 (1957). An application filed several days after the expiration of the lease is filed within a reasonable time and the application to purchase may be considered on its merits.

The case is remanded to the Manager, through the Bureau's Assistant to the State Supervisor at Los Angeles, for consideration of the application to purchase.

For the Director:

Distribution on page 2

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* In the absence of intervening rights.

DISTRIBUTION:

Mr. Phillip Ellis Carter (Regular Mail)
Asst. to SS(Los Angeles) w/Case Record, Los Angeles 0113150
Lands Staff Officer
Appeals List No. 1
MAG

46567

SMALL TRACTS * 5 Renewal of Lease

Where it appears that failure of a small tract lessee to meet the requirements for sale of the leased land may have been due to circumstances beyond her control, her application for renewal of the lease will be remanded for a determination of the factual situation, and for issuance of a renewal lease if warranted.

Lupe E. Arroyo, Los Angeles 0128658 (December 9, 1958)

In reply refer to:
Los Angeles 0128658
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 9, 1958

DECISION

Lupe E. Arroyo : Small Tract Lease

Case Remanded

Lupe E. Arroyo has appealed from a decision of the Manager, which rejected her application for renewal of her small tract lease for the stated reason she failed to construct improvements and thereby qualify to apply for purchase of the tract, and failed to make a showing that failure to do so was justified and that nonrenewal of the lease would work an extreme hardship upon her.

Where an application for renewal is timely filed 1/ but the required improvements have not been placed on the land, a renewal may be approved upon a satisfactory showing as referred to by the Manager. Cf. Henry Offe, 64 I.D. 52 (1957).

The appellant states on appeal she was prevented from constructing improvements on the tract at the beginning of the lease term by illness and death in her family. When she was ready to proceed with improvements, her application for a building permit from San Bernardino County was denied because of proposed highway construction. The record indicates that at the time action was taken on the renewal application (May 2, 1958), the highway alignment was tentative and it was not known whether all, or part, or none of the tract would be involved in the construction. An application filed subsequently by the State of California for the required right-of-way for the proposed highway 2/ disclosed that a portion of the subject tract will not be required for highway purposes. This portion may provide sufficient land upon which small tract improvements can be constructed.

Since it appears that the appellant's noncompliance with the terms of her lease 3/ was due possibly to circumstances beyond her control, the case will be remanded for a determination of the factual situation.

1/ Although the subject application was not filed timely in accordance with the lease terms, it was filed prior to the expiration of the lease and may be considered on its merits. Henry Offe, 64 I.D. 52 (1957).

2/ Right-of-way application filed May 22, 1958, under serial Los Angeles 0158235.

3/ The expiration date of appellant's lease was March 2, 1958.

In the circumstances, the appellant may be granted a renewal lease if warranted by the material facts, embracing that portion of the tract upon which she may be granted a building permit from the county, in order that she may proceed with the construction of improvements thereon to meet the lease requirements for purchase of the leased land.

The case is remanded to the Manager, through the Assistant to the State Supervisor of this Bureau at Los Angeles, California, for further appropriate action consistent with this decision.

For the Director:

DISTRIBUTION:

Mrs. Lupe E. Arroyo (Regular Mail)
Asst. to SS (Los Angeles) w/Case File, Los Angeles 0128658
Lands Staff Officer
Appeals List No. 1
MAG

46567

appeal to Sec
affirmed A-27988 7-29-59

SMALL TRACTS * 5 **Renewal of Lease**

Applications for renewal of small tract leases are properly rejected where they are not filed within the time required by the regulations. The construction of a cement slab only is not a sufficient basis for the renewal of a small tract lease.

Ralph E. Blow et al., Los Angeles 098933 (December 11, 1958)

40

In reply refer to:
Los Angeles 098933
Los Angeles 0102369
0107524
0121384
0138842
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 11, 1958

Certified Mail
Return Receipt Requested

DECISION

Ralph E. Blow et al. : Small Tract Leases

Decisions of Manager Affirmed

Ralph E. Blow and four others 1/ have appealed separately from decisions of the Manager, which rejected their applications for renewal of their small tract leases.

Where an application for renewal is timely filed, but the required improvements have not been constructed, a renewal may be allowed where the failure to erect improvements is justified, and the applicant shows that nonrenewal would work an extreme hardship. Henry Offe, 64 I.D. 52 (1957). In these cases, the appellants did not comply with the terms of their leases with respect to the construction of improvements 2/ nor did they file timely applications for renewal.

Although the lease terms and regulations in effect when the leases were issued 3/ required the appellants to apply for a renewal not less than 60 days before the end of the lease term, the appellants were entitled to the benefits of the regulation in effect at the end of the lease terms, which required only that they apply for a renewal before the expiration of the lease term. Henry Offe, supra. The appellants' formal applications for renewal were not filed in time to meet even the requirements of this amended, more liberal regulation (43 CFR, 257.15a), and rejection of the applications for renewal was proper. Cf. Minta Harper Dozier, A-27221 (November 17, 1955).

1/ Donald D. Lindsey, Los Angeles 0102369
Herbert Webster 0107524
Martha G. Betz 0121384
Paul R. Baker 0138842

2/ Each appellant agreed under section 2(a) of his lease, to construct upon the land substantial improvements appropriate for the use for which the lease was issued, i.e., a cabin site.

3/ With the exception of lease Los Angeles 0138842 which was issued under the amended regulations.

With respect to the allegation of one appellant (Martha G. Betz, Los Angeles 0121384) concerning the delayed delivery by the Post Office of her application for renewal, it has been held that a paper or document is filed only at the time when actually delivered to and received by the Land Office, not when it could have reached the office in the regular course of the mails. H. P. Saunders, Jr., 59 I.D. 41 (1945). In addition, the records show that this appellant placed no improvements on the tract during the term of her lease. The other appellants placed only cement slabs on the leased lands. Such improvements fail to show compliance with the terms of a small tract lease. James E. Wilkinson et al., Los Angeles 080606 (July 9, 1958).

Assertions are made on appeal as to health, financial and family circumstances which prevented the lessees from complying with the terms and conditions of their leases. Assertions similar to these have been considered insufficient in other cases to warrant renewal of small tract leases. There was ample time in which to construct improvements and thereby qualify for purchase of the tracts, and there is insufficient justification for failure to do so. James E. Wilkinson et al., supra. Nor has it been shown in any case that failure to renew the lease would work an extreme hardship on the lessee (43 CFR, 257.15c). 4/ There appears to be no basis, therefore, on which the leases may be renewed.

If the lands are disposed of to other persons they will be required to compensate the appellants for the improvements on the lands, if the improvements are of value to such persons.

Each lessee is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

A. H. Tarr

Enclosure

DISTRIBUTION:
Mr. Ralph E. Blow (Certified Mail)
Mr. Donald D. Lindsey (Certified Mail)
Mr. Herbert Webster (Certified Mail)
Mrs. Martha G. Betz (Certified Mail)
Mr. Paul R. Baker (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MAG

4/ The lessee under Los Angeles 098933 makes a further, unsupported allegation that he has committed himself to expenditures of approximately $1,200 for construction of improvements and other facilities on the tract.

46567

appeal to Sec
affirmed A-27969 8-4-59

SMALL TRACT * 5 Renewal of Leases

An application to renew a lease is properly rejected where the lessee did not construct improvements on the land during the term of the lease and does not establish that his failure to meet the requirements of sale is justified, and that non-renewal of the lease would work an extreme hardship on him.

Ira A. Kleiner, Los Angeles 0122487 (December 12, 1958)

In reply refer to:

Los Angeles 0122487
5.04g

December 12, 1958

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Ira A. Kleiner	:	Small Tract
	:	
	:	

Manager's Decision Affirmed

Ira J. Kleiner has appealed from the decision of the Manager, which rejected his application for the renewal of his small tract lease, for the reason that he had not shown that his failure to meet the requirements for sale was justified and that the non-renewal of the lease would work an extreme hardship on him.

The records show that the small tract in issue, which was classified for lease and sale, is located in San Bernardino County,California, and a lease was issued therefor for a period of three years effective May 10, 1955, contemplating the erection of a dwelling.

The appellant, who lives in Pontiac, Michigan, asserts that it was his intention to construct the necessary improvements on the land during the life of the lease, however, ill health and financial conditions prevented him from doing so. He further contends that he plans to retire soon, and to deprive him of the use of the small tract for homesite from the standpoint of making a living and because of his health, would work an extreme hardship on him.

The assertions made by the appellant are not sufficient to justify the failure to construct the required improvements on the land. Amandus James Joseph Jansen, Los Angeles 0138698 (September 8, 1958).

Since there are no improvements on the land, non-renewal of the lease could not work an extreme hardship on the appellant. Jimmie Deones, A-25739 (February 11, 1958). Moreover, it has been held by the Department that a small tract lessee who fails to comply with the terms of the lease which require that substantial improvements be placed on the land leased, is not entitled to a renewal of the lease. Cf. Ernest J. Van Loon, A-27087 (April 12, 1955).

The decision of the Manager is therefore affirmed.

Mr. Ira A. Kleiner is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:

Mr. Ira A. Kleiner (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

46567

LE(Sa)

SMALL TRACTS * 3 Classification

A small tract application rejected on grounds of adverse classification will be remanded where the record does not provide a sufficient basis for an informed determination as to the proper classification of the land.

George J. Daglas, Nevada 037761 (December 12, 1958)

20

In reply refer to:

Nevada 037761
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 12, 1958

DECISION

George J. Daglas : Small Tract Application

Case Remanded

George J. Daglas has appealed from a decision of the Manager which rejected his small tract application because the lands are rough and inaccessible, domestic water would be expensive to develop, and settlement on the lands would place an undue burden upon state and local government to provide roads and police and fire protection. The decision stated further that there is a limited amount of vacant public land available in other parts of the Las Vegas Valley which has been classified for small tract use. The decision allowed the applicant 60 days in which to amend his application to conform to lands already classified for direct sale under the Small Tract Act. The decision also provided for the usual right of appeal.

The record in the case is insufficient to provide a basis for an informed decision concerning the proper classification of the land. Therefore, the case is hereby remanded to the Manager, through the Bureau's State Supervisor, Reno, Nevada, for further appropriate consideration.

For the Director:
John B. Piccolo

Enclosure

DISTRIUBTION:
Mr. George J. Daglas (Regular Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

46567

appeal to Sec
affirmed A-27975 8-4-59

SMALL TRACTS * 5 Renewal of Lease

Small tract lease renewal applications were properly rejected where the lessees did not establish that failure to meet the requirements of sale was justified and that nonrenewal of the leases would work an extreme hardship on them. The bare claim of lack of finances does not justify failure to construct substantial improvementson the land. Theodore D. Allen, et al., Los Angeles 0106486, etc. (December 12, 1958)

In reply refer to:
Los Angeles 0106486
0109648
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 12, 1958

Certified Mail
Return Receipt Requested

DECISION

Theodore D. Allen : Small Tracts
Marshall Light Samuels :

Manager's Decisions Affirmed

Theodore D. Allen and Marshall Light Samuels have appealed from separate decisions of the Manager, rejecting their applications for second renewals of small tract leases for the stated reasons that the appellants have failed to show that their failure to meet the requirements for sale of the tracts was justified and that nonrenewal of the lease would work an extreme hardship on the lessees.

Each appellant had been issued a small tract lease for a period of three years, with the option to purchase after one year provided he had placed the required improvements on the land. Each appellant had his small tract lease term renewed for one year and both have timely filed for a second renewal. Each application recites that a cement slab has been placed upon the land, and Mr. Allen states that he has completed a road.

Each appellant has asserted that it was financially inopportune for him to complete the improvements during the lease term.

Where an application for renewal is timely filed, but the required improvements have not been placed on the land, a renewal may be approved upon a satisfactory showing that the failure to construct upon the land substantial improvements, appropriate for the use for which the lease was issued, is justified and that nonrenewal of the lease would work an extreme hardship on the lessee. Henry Offe, 64 I.D. 52 (1957).

In the instant cases, we find there was ample time in which to construct the required improvements within the terms of the leases and the previous renewals and the reasons offered by the appellants are not deemed adequate to excuse their noncompliance with the lease terms. The bare claim of lack of finances does not justify a failure to construct required improvements. A. John Davis, Juneau 010179 (October 17, 1958). The Department has consistently held that a small tract lessee who has failed, without justification, to comply with the requirements of his lease that substantial improvements be made on leased land during the lease term is not entitled to a renewal of his lease. Cecil R. Vaughn, A-27477 (October 24, 1957). The pouring of a cement slab is not a sufficient predicate for renewal of a small tract lease. Holbert E. Thompson, et al., Los Angeles 0101557 (July 22, 1958). The appellants have not shown that nonrenewal would work an extreme hardship on them. Both showings are prerequisite to the granting of a renewal lease in the circumstances.

The decisions of the Manager are, therefore, affirmed.

If the land is disposed of to other persons, they will be required to reimburse the appellants for any improvements to the land if the improvements are of value to such persons. James E. Wilkinson, et al., Los Angeles 080606, etc. (July 9, 1958).

Messrs. Allen and Samuels are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:

Mr. Theodore D. Allen (Certified Mail)
Mr. Marshall Light Samuels (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
JHO'D

46567

appeal to Sec
affirmed A-27991 7-17-59

ST

RULES OF PRACTICE * 11 Statement of Grounds

An appeal to the Director will be dismissed where the appellant has failed to state the reasons for his appeal as required by the rules of practice.

Where an appellant fails to file a statement of reasons for his appeal within the time allowed by the rules of practice, the appeal will be dismissed.

Douglas Robert Wright et al., Los Angeles 0118065 etc. (December 17, 1958)

In reply refer to:
Los Angeles 0118065 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 17, 1958

Certified Mail
Return Receipt Requested

DECISION

Douglas Robert Wright et al. : Small Tract Applications

Appeal Dismissed

Douglas Robert Wright and five other small tract applicants 1/ have appealed from a decision of the Acting Manager which rejected their small tract applications because the lands are valuable for recreational purposes. The land in issue, and other lands, were classified for lease or sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 869), on April 23, 1958.

The appellants filed a joint appeal from the decision of the Manager. In their appeal they state:

> "We have no confidence in these appeals meaning anything and make them merely as matters of form for future action.
>
> "Your unprofessional conduct of keeping us busy for four years at repeated attempts to prove to you that the areas designated above were valuable enough to classify as 5 acre tracts, only to now disqualify them on the basis that they are too valuable and should be held for public use, is in our opinion little short of ridiculous."

The statement does not point out why the appellants believe the decision is in error. Therefore, the statement does not meet the requirements of the rules of practice. Hector Aitchison, A-27226 (November 21, 1955). Those rules require that a statement of reasons

---

1/ The names of the other appellants and the serial number of their applications are as follows:

Marshall W. Costello	Los Angeles 0118072
Mildred E. Broderick	" " 0118073
James Hugh Wright	" " 0118075
Annie J. Wright	" " 0118094
Marian I. Wright	" " 0118152

for an appeal must be filed. Under the current rules, the statement may accompany the appeal but, if it does not, it must be filed within 30 days after the notice of appeal is filed. 43 CFR, 1954 Rev., 221.32 and 221.33 (Supp.). 2/ The rules provide for the summary dismissal of an appeal "If the statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required." 43 CFR, 1954 Rev., 221.98 (a) (Supp.).

In Duncan Miller, 65 I.D. 290 (1958), the Department stated that an appeal will be dismissed where the appellant fails to state the reasons for appeal as required by the rules of practice.

Accordingly, the appeal is dismissed.

Mr. Douglas Robert Wright and the other appellants listed in footnote 1 are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Douglas Robert Wright (Certified Mail)
Mr. Marshall W. Costello (Certified Mail)
Mrs. Mildred E. Broderick (Certified Mail)
Mr. James Hugh Wright (Certified Mail)
Mrs. Annie J. Wright (Certified Mail)
Mrs. Marian I. Wright (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

2/ These rules were amended effective as of March 22, 1958 (23 F. R. 1930), but without change so far as the issue involved in this decision is concerned.

SMALL TRACTS * 5 **Renewals**

Applications for renewal of small tract leases are properly rejected where the lessees have not shown a justifiable basis for excusing their failure to meet the requirements for purchase of the tracts and made a showing that nonrenewal of the leases would work an extreme hardship upon them.

Edwin Tripamer et al., Los Angeles 092557 (December 18, 1958)

In reply refer to:
Los Angeles 092557
0101540
0123190
0126741
0126638
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 18, 1958

Certified Mail
Return Receipt Requested

DECISION

Edwin Tripamer et al. : Small Tract Leases

Decisions of Manager Affirmed

Edwin Tripamer 1/ and four others 2/ have appealed separately from decisions of the Manager, rejecting their applications for renewal of their small tract leases 3/ for the stated reason that they failed to construct improvements and thereby qualify to apply for purchase of the tracts, and failed to make a showing that their failure to do so was justified and that nonrenewal of the leases would work an extreme hardship on them.

Where an application for renewal is timely filed but the required improvements have not been placed on the land, a renewal may be approved upon a satisfactory showing as referred to by the Manager. Henry Offe, 64 I.D. 52 (1957).

Each lessee agreed, under the terms of his 3-year lease, to construct upon the leased land substantial improvements appropriate for the use for which the lease was issued, namely, a cabin or residence site.

1/ Appeal signed by wife of Edwin Tripamer. 43 CFR, 1954 ed., 1.3(b)(3)(i).

2/

Gilbert Gordon Hadley, Los Angeles	0101540
John Freiburg	0123190
Martha L. Hansen	0126741
Ray Mead	0126638

3/ Although the applications were not filed timely in accordance with the lease terms, they were filed prior to the expiration of the leases and may be considered on their merits. Henry Offe, 64 I.D. 52 (1957).

The reasons assigned by the appellants as to health, business, financial or family circumstances which prevented them from complying with the terms of their leases with respect to the construction of improvements, do not provide sufficient bases for finding, under 43 CFR, 1956 Supp., 257.15(c), that the lessees' failure to meet the requirements for sale of the tracts was justified. 4/ Nor has it been shown in any case that nonrenewal of the lease would be an extreme hardship for the lessee, since no improvements have been erected. Jimmie Deones, A-27539 (February 11, 1958).

The fact that the appellants were not in the vicinity of the land by reason of business or employment elsewhere, does not excuse them of the obligations imposed by their leases to construct improvements, since there was no requirement that they do the work themselves. Russell L. Coe, A-27227 (January 24, 1958). A small tract lessee who has failed to comply with the requirements of the lease that substantial improvements be placed on leased land, is not entitled to a renewal of the lease. Cf. Ernest J. Van Loon, A-27087 (April 12, 1955).

The decisions of the Manager are affirmed.

Each party is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:
Hon. Roman L. Hruska, United States Senate
Mr. Edwin J. Tripamer (Certified Mail)
Dr. Gilbert Gordon Hadley (Certified Mail)
Mr. John Freiburg (Certified Mail)
Mrs. Martha L. Hansen (Certified Mail)
Mr. Ray Mead (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MAG

4/ The lessee under Los Angeles 0126638 alleges in effect he was prevented from erecting improvements before the expiration of his lease term on April 28, 1958, because he did not receive replies to letters of March 6, submitting application for lease renewal, and of April 4. However, a lessee is presumed to know the terms of his lease, which includes provisions regarding construction of improvements to qualify for purchase of the tract, or for renewal of the lease. Cf. Robert Uptain, A-26956 (October 25, 1954).

LL(Sec)

SMALL TRACTS * 5 Renewal of Lease

* 6 Sales

Although an application for renewal of a small tract lease is properly rejected if not timely filed, it may be treated as an application for purchase of the tract where it is filed within a reasonably short time after the expiration of the lease term, and in the absence of intervening rights.

In the circumstances, where it appears that a small tract lessee has placed improvements on the leased land, the case will be remanded for appropriate consideration of the application to purchase.

Ronald D. Chase, Los Angeles 0112419 (December 23, 1958)

RO

In reply refer to:
Los Angeles 0112419
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 23, 1958

DECISION

Ronald D. Chase : Small Tract

Case Remanded

Ronald D. Chase has appealed from a decision of the Manager, rejecting his application for renewal of his small tract lease for the stated reason that the renewal application was not filed prior to the expiration of the lease.

The lease terminated August 4, 1957 and the application to purchase was filed August 16, 1957. The record indicates that the appellant has made progress in construction of a cabin * on the tract.

The appellant bases his failure to timely file application for renewal on the fact that when he inquired of the Land Office concerning an extension, prior to the date his lease was due to expire, he was not informed of the necessity of immediately filing application therefor. The formal application for renewal not having been timely filed, it was properly denied by the Manager. Cf. Minta Harper Dozier, A-27221 (November 17, 1955). However, the renewal application may be treated as an application to purchase the tract (Cf. Joseph J. Rasmussen, Washington 0198, January 17, 1958), even though it was filed after the termination of the lease term, in the absence of intervening rights. Albert H. Dobry et al., 64 I.D. 116 (1957).

The case is remanded to the Manager, through the Assistant to the State Supervisor of this Bureau at Los Angeles, California, for a determination whether the appellant has substantially complied with the lease requirements, and for appropriate consideration of the application as an application to purchase.

For the Director:
John B Piccolo

DISTRIBUTION:

Mr. Ronald D. Chase (Regular Mail)
Asst. to SS (Los Angeles) w/Case File, Los Angeles 0112419
Lands Staff Officer
Appeals List No. 1
MAG

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*/ The lease contemplated the use of the land as a cabin site.

46567

LO (Sac)

SMALL TRACTS * 6 Sales

Where a small tract lessee seeks to purchase a tract leased to him in southern California without making improvements and his purchase application is rejected for failure to construct improvements, the Manager's decision will be reversed and the case remanded for consideration in accordance with the special rule or waiver approved July 18, 1957.

Arthur C. Gerber, Los Angeles 0145072 (February 9, 1959)

LO

In reply refer to:
Los Angeles 0145072
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 9, 1959

DECISION

Arthur C. Gerber : Small Tract

Decision of Manager Reversed
Case Remanded

Arthur C. Gerber has appealed from a decision of the Manager, rejecting his application to purchase a tract leased to him for the stated reason that he did not construct the improvements necessary to meet the lease requirements for purchase of the land and did not show in what way nonrenewal of the lease would work an extreme hardship upon him. 1/

The lessee asks that his request to purchase be considered under the current, more liberal Bureau policy authorizing purchase of such tracts without construction of improvements on the land. He apparently has reference to the special rule of June 21, 1957, approved by the Department July 18, 1957, authorizing modification of small tract purchase requirements under certain conditions in southern Calfornia. Under this special rule, small tract lessees holding purchase options may be allowed to exercise them under certain conditions even though they have constructed no improvements upon the leased tracts.

No objection appearing, the case is remanded for consideration by the Manager in accordance with the special rule, to determine if the local area within which the tract lies is one wherein the special rule should now be applied, whether such lands meet the standards for direct sale set by the regulation 43 CFR, 1957 Supp., 257.2(b), 2/and to consider whether it may be otherwise appropriate that the lessee be allowed to purchase the tract upon payment of the reappraised fair market value of the land, as of the market conditions which existed at the time of the original appraisal.

1/ The application was one for purchase only; the lessee did not request a renewal lease.

2/ The standards for direct sale are not met where the county has not exercised its authority to establish adequate building, sanitation, and health requirements and where the public interest would be jeopardized by use of this authority.

The Manager's decision is reversed and the case remanded, through the Bureau's Assistant to the State Supervisor at Los Angeles, California, for further action not inconsistent with this decision.

Edward Woozley
Director

DISTRIBUTION:

Mr. Arthur C. Gerber (Regular Mail)
Hon. Thomas M. Pelly, Member of Congress ([illegible])
Asst. to SS (Los Angeles) w/Case Record, Los Angeles 0145072
Lands Staff Officer
Appeals List No. 1
MAG

appeal to Sec
Reversed & Remanded A-28027
12-22-59

SMALL TRACT * 5 Renewal of Lease

An application to renew a small tract lease issued for lease and sale for the second time is properly rejected where the lessee did not construct any improvements on the land during the term of the lease and does not establish that the failure to meet the requirements of the renewal or sale is justified and that nonrenewal of the lease would work an extreme hardship on him, and where a previous decision of the Secretary of the Interior provided that the lease would be renewed to a certain time only.

Henry Offe, Los Angeles 073967 (February 16, 1959)

In reply refer to:

Los Angeles 073967
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 16, 1959

Certified Mail
Return Receipt Requested

DECISION

Henry Offe : Small Tract

Manager's Decision Affirmed

Henry Offe has appealed from the decision of the Manager, which rejected his application for the renewal of his small tract lease, for the stated reasons that he has not placed the required improvements on the tract in issue, and has not satisfactorily explained his failure for not doing so, and that nonrenewal of the lease would not work an extreme hardship on him.

It is apparent from the records that this is the second time the appellant has applied for a renewal of his small tract lease and under similar circumstances.

The decision rejecting his first application for renewal was reversed upon appeal to the Secretary of the Interior, in which the Assistant Secretary held in his decision, Henry Offe, 64 I.D. 52 (1957) that the appellant was entitled to a renewal in the circumstances, and the case was remanded to the Bureau with the instructions to renew the lease until December 31, 1957. 1/

The reasons given by the appellant in his present appeal for his failure to construct the required improvements on the lands have been carefully considered. The appellant asserts that his failure to comply with the improvement requirements was because of the ill health of the appellant and his wife, financial reasons, inability to find some one to construct the improvements for him, and for the added reason that the new building code imposed by San Bernardino County requiring an increased minimum of 400 square feet of floor space in all dwellings constructed therein prevented him from completing the necessary improvements.

1/ A renewal lease effective for three years from April 11, 1955 was issued instead.

On the basis of the records, however, it is rather doubtful that the appellant will be in a position to construct the necessary improvements on the land in the near future, since he has failed to do so in approximately eight years, he has had it under lease. Nor has the appellant offered any satisfactory explanation for his failure to comply with these requirements, and that a nonrenewal of the lease would work an extreme hardship on him. It was therefore proper to reject his application for the renewal of the lease. Cf. Cecil R. Vaughn, A-27477 (October 24, 1957). Moreover, it was the apparent intent of the Assistant Secretary of the Interior in his decision, Henry Offe, supra, that the lease was to be renewed only until December 31, 1957, and for only the one time, since as stated therein " * * *This will afford the appellant ample time to construct the needed improvements on the land and to purchase the land."

The decision of the Manager is therefore affirmed.

Mr. Henry Offe is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

DISTRIBUTION:
Hon. Harry R. Sheppard, House of Representatives
Mr. Henry Offe (Certified Mail)
Lands Staff Officer
Appeals List No. 1
RBO

LA(Sac)

SMALL TRACTS * 5 Renewal of Lease

* 6 Sales

An application for renewal of a small tract lease is properly rejected where the application is not filed prior to the expiration of the lease. However, where the record on appeal discloses the Manager failed to consider a purchase application for the same land, the record will be remanded for such further consideration.

Audrey Boles, Los Angeles 094603 (February 18, 1959)

RO

In reply refer to:

Los Angeles 094603
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 18, 1959

DECISION

Audrey Boles : Small Tract

Decision of Manager Affirmed
Case Remanded

Audrey Boles has appealed from a decision of the Acting Manager, rejecting his application for renewal of his small tract lease for the reason that the renewal application was not filed prior to the expiration of the lease. The Manager stated the application to renew the lease was filed 13½ months after the lease had expired and that some improvements had been placed on the land.

The appellant does not dispute that his renewal application was filed at the time stated by the Manager. He urges that he be permitted to purchase the tract because of improvements he has placed thereon. He explains his delay in applying for renewal was not due to a lack of diligence on his part but rather to his belief that the improvements on the land were acceptable and he would therefore be notified of his entitlement to purchase the tract. He alleges good faith in continuing to place improvements upon the tract and that he was not notified that the improvements he placed upon the land would not entitle him to obtain a renewal of his lease until a considerable time had elapsed after the expiration of the lease.

A lessee is presumed to know the terms of his lease. Cf. Jimmie Deones, A-27539 (February 11, 1958). It is not obligatory upon the Bureau to notify a lessee of the approaching expiration date of his lease, or of the necessity for filing a timely application for renewal lease or an application for purchase of the leased land. The decision of the Manager was correct and is affirmed.

With the application for renewal the lessee filed an application to purchase the tract. The record does not disclose that the Manager took any action with respect to the purchase application. Accordingly, the case is remanded to the Manager, through the Assistant to the Bureau's State Supervisor at Los Angeles, California, for consideration of the application for purchase in accordance with regulatory requirements and any special rules which are applicable to the land here involved.

For the Director:

DISTRIBUTION:

Mr. Claude L. Welch, Attorney for Appellant (Regular Mail)
Mr. Audrey Boles (Regular Mail)
Asst. to SS(Los Angeles) w/case record, Los Angeles 094603
Lands Staff Officer
Appeals List No. 1
MAG

appeal to Sec
affirmed A-28030 - 8-17-59
LD (Sec)

SMALL TRACT * 1 Generally

* 2 Application

PUBLIC LAND * 9 Patents of Public Lands

It is proper to reject a small tract application for land for which a patent has been issued under the authority of other applicable law.

Once a patent has been issued, the Department has no jurisdiction to inquire into and determine the rights of one claiming adversely to the patentee. Legal rights in public lands cannot be acquired by merely filing an application therefor for a small tract.

An appeal from a decision rejecting an application for land that has been patented will be dismissed, since the Department would have no basis upon which to recommend action respecting title thereto.

Miles W. Payne, BLM 041279 (February 24, 1959)

LD

In reply refer to:
BLM 041279
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 24, 1959

Certified Mail
Return Receipt Requested

DECISION

Miles W. Payne : Small Tract

Appeal Dismissed

Miles W. Payne has appealed from a decision by the Chief, Lands Adjudication Section, Eastern States Land Office rejecting his small tract application, BLM 041279. The application was rejected on the grounds that it was in conflict with a valid color-of-title application, BLM 045453. The appellant applied for two unsurveyed islands in Section 22, T. 15 N., R. 8 W., Michigan Meridian, Michigan. This appeal is limited to the rejection as to the island described as lot 8, Section 22. The appellant alleges that lot 8 has not been held adversely under claim or color-of-title for 20 years by Harold G. and Pauline S. Axtmann.

By letter dated October 7, 1958, addressed to Mr. John N. Eliasohn, attorney for the appellant, he was allowed until November 3 in which to file a statement of reasons in support of his appeal. In the meantime, however, Patent No. 1187486, issued inadvertently to Harold G. and Pauline S. Axtmann on October 17, 1958. Since patent has issued, this Department has no jurisdiction to inquire into and determine the rights of one claiming adversely to the patentee. Rose Tully, Barney A. and Dollie B. Cornelius, Patentees, A-26719 (September 9, 1953). After a patent has been issued, the Department can only recommend, in appropriate cases, that suit be instituted to have the patent annuled by a court of competent jurisdiction. The Department will not advise the institution of a suit for the cancellation of a patent unless it was issued by fraud or mistake and an interest of the Government or one to whom it is under obligation has thereby suffered. Such a suit is not instituted if its only purpose is to benefit one of two claimants to land in which the Government has no interest. Rose Tully et al., supra.

The Government has no interest in the land in question. It has sold the land under authority of law to the patentee, in whom the title is now vested. Furthermore, the Government is under no legal obligation to the appellant since he acquired no personal or property rights merely by filing his small tract application for the land. Cf. Everett Elvin Tibbets, 61 I.D. 397 (1954).

Since there is no basis upon which the Department can recommend any action respecting the title to the land in question, this appeal is dismissed.

Miles W. Payne is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Miles W. Payne, then the adverse parties to be served are:

Harold G. and Pauline S. Axtmann
R. R. No. 1
Rodney, Michigan

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Mr. Miles W. Payne (Regular Mail)
Mr. John H. Eliasohn (Certified Mail)
Hon. Charles E. Chamberlain (Regular Mail) House of Representatives
Hon. Gerald R. Ford, Jr. (Regular Mail) House of Representatives
Harold G. and Pauline S. Axtmann (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

40261

ADJUDICATION * 1 Generally

SMALL TRACTS * 1 Generally

* 2 Applications

* 3 Classification

Where small tract offers have been rejected on the basis that the land applied for is affected by valid mining claims, and it subsequently appears that the mining claims may not be valid, the small tract cases will be remanded for further appropriate consideration.

In the circumstances, a determination first should be made whether the land is physically and primarily valuable for small tract development, apart from the question of the mining claims. If the land is found to be so suitable, then further consideration should be given to the validity of the mining claims.

Virgel P. Cowart et al., Sacramento 048964 et al. (February 26, 1959)

In reply refer to:
Sacramento 048964
048977
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

February 26, 1959

DECISION

Virgel P. Cowart
Don D. Stinson

: Small Tracts

Cases Remanded

Messrs. Cowart and Stinson have appealed from the decisions of the Manager rejecting their small tract offers for the stated reason that the land applied for has been " *** classified as improper for small tract settlement for the reason that it is embraced in valid surveyed placer mining claims."

Information of record indicates that the mining claims may be invalid.

In the circumstances, it would be appropriate for the Manager to first determine whether the land is physically and primarily 1/ suitable for small tract development apart from any question of the mining claims. If the land is determined to be so suitable, then a further field examination of the mining claims should be made. If it appears as a result of such an examination that the mining claims are invalid, contest proceedings should be initiated against the claims and appropriate action taken on the small tract offers after final disposition of the contest proceedings.

If the lands should be determined to not be suitable for small tract development apart from the question of the mining claims, 2/ then the small tract offers should be rejected. Cf. J. W. Allen et al. v. E. A. Mohler et al., A-26931 (November 5, 1954).

If it appears after reexamination that the claims are valid then the small tract offers should be rejected. If the mining claims are held to be valid in contest proceedings, then the small tract offers should be rejected.

1/ More suitable for small tract development than for any other development.

2/ The records indicate that Mr. Stinson's offer includes land affected by the Southern Pacific railroad right-of-way.

Accordingly, the cases are remanded to the Manager through the Bureau's State Supervisor at Sacramento, California, for appropriate consideration in the light of the principles enunciated in this decision.

For the Director:

A. H.

DISTRIBUTION:

Mr. Virgel P. Cowart (Regular Mail)
Mr. Don D. Stinson (Regular Mail)
Minerals Staff Officer (3)
Lands Staff Officer (1)
Appeals List No. 1
FF

appeal to Sec
affirmed A-28048 10-30-59

LO(Sac)

SMALL TRACTS * 2 Applications
* 3 Classification
RECREATION ACT * 1 Generally

Small tract applications are properly rejected where the land sought is steep and inaccessible and the tract is prospectively valuable for recreational purposes and has been classified for disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended.

Burton C. Corwin et al., Sacramento 053371 etc. (March 12, 1959)

In reply refer to:

Sacramento 053371, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 12, 1959

Certified Mail
Return Receipt Requested

DECISION

Burton C. Corwin *et al*. : Small Tract Applications
:
:

Manager's Decision Affirmed

Burton C. Corwin and three others 1/ have appealed from a decision of the Manager dated May 22, 1958, which rejected 41 small tract applications embracing lands in the $S\frac{1}{2}$ of sec. 28, T. 20 N., R. 6 E., M.D.M., California. The applications were rejected for the stated reason that the land was found to be unsuitable for small tracts because of its steep topography, highly erodible soil conditions, and inaccessibility. The land was classified as suitable for disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C., 1952 ed., Supp. IV, sec. 869).

The land is an isolated tract located in Butte County, California, about a half mile north of the South Fork of the Feather River. The report of field investigation discloses that (1) with the exception of 5 or 6 scattered small, somewhat flat, acreages of 2-5 acres, comprising not more than approximately 30 acres, the terrain is excessively steep, a 600 feet rise in one half mile; (2) the soil is mostly of loose granitic material, revealing indications of erosion; (3) the tract is inaccessible except over privately-owned lands; and (4) the land is located about one-quarter of a mile from the proposed Orville-Feather River Dam and is considered to have future values for recreational purposes. The record indicates that Butte County may acquire the land for public recreational purposes when the Orville Dam is completed under the Recreation and Public Purposes Act, *supra*.

1/ The names of the other appellants and the serial number of their applications are as follows:

Edgar F. and Ila O. Matthews	Sacramento 054375
Everett L. Matthews	" 054447
Eugene E. Matthews	" 054473

The Department has held that small tract applications are properly rejected where the land applied for is steep, 2/ inaccessible except over privately-owned land, 3/ and the tract is prospectively valuable for recreational purposes. 4/

Furthermore, it is the express policy of the Department to make public lands valuable or prospectively valuable for public recreation purposes available for use by the general public. See Policy Statement, approved by the Secretary of the Interior on April 16, 1958. Cf. Kenneth L. Elges, Carson City 023955 and 023956 (September 23, 1958).

In their appeals, the appellants merely deny the conclusions of the Manager, without offering substantial and positive evidence in support of their contentions.

The Department has consistently held that an applicant for public land who appeals from an adverse classification has the burden of showing in what respect the adverse classification is in error. In the absence of an error which appears on the face of the record, the applicant must show by positive and substantial evidence that the land is suitable for the requested use and that the adverse classification is erroneous. Harry E. Andersen, A-27313 (June 14, 1956).

The decision of the Manager is affirmed. Lewis E. King et al., A-27772 (November 21, 1958).

Mr. Burton C. Corwin and the other appellants listed in footnote 1 are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director

Enclosure

Distribution on page 3

2/ Harry Carson et al., A-27289 (May 28, 1956).

3/ Eugene Robson, A-27334 (July 13, 1956).

4/ Madeline Annie Albert et al., Sacramento 050009 etc. (May 16, 1958).

DISTRIBUTION

Hon. Clair Engle, United States Senate
Mr. Burton C. Corwin (Certified Mail)
Mr. and Mrs. Edgar F. Matthews (Certified Mail)
Mr. Everett L. Matthews (Certified Mail)
Mr. Eugene E. Matthews (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

appeal to Sec
Affirmed A-28044
10-9-59

LO (Sac)

SMALL TRACTS * 2 Application
* 3 Classification
PUBLIC SALE * 2 Application

Where a tract of land is suitable for disposition in its entirety by public sale, or partially by small tract leases leaving an irregular pattern of land which is difficult to administer and is not required for government retention, it is proper to dispose of the entire tract by public sale.

Richard W. Greenman, Los Angeles 0120927 (March 12, 1959)

LO

In reply refer to:

Los Angeles 0120927
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 12, 1959

Certified Mail
Return Receipt Requested

DECISION

Richard W. Greenman	:	Small Tract Application
	:	
	:	

Manager's Decision Affirmed

Richard W. Greenman has appealed from a decision of the Manager rejecting his small tract application for a five-acre tract in sec. 24, T. 11 N., R. 16 W., S.B.M., California, because the land is not suitable for small tract development.

The land is a portion of an isolated tract* located about 35 miles southeast of Bakersfield, California. An examination disclosed that the major portion of section 24, T. 11 N., R. 16 W., is rough and mountainous, with slopes ranging up to 30 percent. The land is inaccessible except by foot and the cost of building and maintaining roads thereon for small tract development would be prohibitive. The section was classified as suitable for disposal under the Public Sale Law pursuant to application, Los Angeles 0157599, of Nathan N. Gold.

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land as suitable for disposal by public sale is erroneous. The Department has stated that where an applicant appeals because of an adverse classification, the burden is on the appellant to show by substantial and positive evidence that the adverse classification is erroneous. Della Lee Halloran, A-27433 Supp. (May 31, 1957).

The appellant admits that the major portion of the section is rough and mountainous. He contends, however, that the tract applied for is suitable for small tract use. Where a tract of public land is suitable for disposition in its entirety as an isolated tract or possible as several small tracts, it is in the public interest to dispose of it as an isolated tract where there is no assurance that the entire area could be disposed of at once as small tracts. James J. Kendrew, A-27145 (April 8, 1955).

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* The isolated tract is described as sec. 24, T. 11 N., R. 16 W., S.B.M. California.

In cases where the topography presented a problem similar to that of the present tract in question the Department has held that in view of the topography and the irregular land pattern and problems of administration that would result from small tract classification, the classification of the land as suitable for disposition by public sale appears proper. Harry Carson et al., A-27289 (May 28, 1956).

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land as suitable for disposal by public sale. The appellant's application was properly rejected. Nelson W. Hope, A-27570 (April 17, 1958).

Accordingly, the decision of the Manager is affirmed.

Mr. Richard W. Greenman is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Greenman, then the adverse party to be served is:

Mr. Nathan N. Gold
5150 Treesdale Avenue
North Hollywood, California

For the Director:

Enclosure

DISTRIBUTION:
Mr. Richard W. Greenman (Certified Mail)
Mr. Nathan N. Gold (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

50991

LO(Sac)

SMALL TRACTS * 2 Application
* 4 Priority Rights
* 5 Renewal of Lease

VETERANS * 2 Veterans Preference

DEPT. OF
SACRAMENTO
APR 13 10 00 AM
BUREAU OF
LAND MANAGEMENT
LAND OFFICE

A "Drawing Entry Card", Form 4-775, is not a proper application for a small tract when the governing regulation states an offer to lease a site under the small tract act must be filed on Form 4-776, "Offer to Lease and Lease under Small Tract Act".

A drawing held by the Manager without authorization confers on the successful drawee no priority right to a small tract lease. It is proper to reject a subsequent application to lease by drawee which describes lands for which a prior applicant has a preference right and a lease is later issued.

A veteran who fails to timely file an application to lease within the veterans preference period for filing as specified in the classification order will not be accorded such a preference, and stands in no better position than the public generally.

Where a three-year small tract lease was cancelled erroneously eight days after its issuance, and action on the appeal therefrom has been administratively delayed, the status of the lease thereafter being somewhat doubtful, Held: it is appropriate to extend the period of the lease for one year from the date the decision on appeal becomes final, to afford the lessee an opportunity to place improvements on the leased tract without undue hardship.

Edmund Parker Sampson, Los Angeles 091704 (March 24, 1959)

LO

TERIOR
O. CAL.
1959

In reply refer to:
Los Angeles 087082
091704
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 24, 1959

Certified Mail
Return Receipt Requested

DECISION

Edmund Parker Sampson : Small Tract
Glenn D. Young :

Decision of Manager Affirmed
Case Remanded

Edmund Parker Sampson has appealed from a decision of the Manager, rejecting his small tract application for the stated reason that a lease for the same small tract was issued to Glenn D. Young, LA 087082, in compliance with a Regional Office memorandum dated March 19, 1953, in which instructions were given to issue the lease to Mr. Young.

By Executive Order 6361 of October 25, 1933, the land for which the appellant applied was withdrawn, along with other land, pursuant to the act of June 25, 1910, as amended (43 U.S.C., 1952 ed., secs. 141-3) for classification pending determination as to the advisability of including such lands in a national monument. Part of the lands which were withdrawn by this order were set apart as the Joshua Tree National Monument by Presidential Proclamation No. 2193, dated August 10, 1936 (50 Stat. 1760), and part of these lands set apart by this proclamation later became a part of the Joshua Tree National Monument established by the Act of September 22, 1950 (16 U.S.C., 1952 ed., secs. 450 ii - 450 ii - 3).

The land in question in this case was included in the Joshua Tree National Monument by the Presidential Proclamation of August 10, 1936, but eliminated therefrom by the Act of September 25, 1950. Section 2 of the Act provided that "All public domain lands heretofore included within the Joshua Tree National Monument which are eliminated from the National Monument by this Act are hereby opened to location, entry, and patenting under the United States Mining laws: Provided, That such public domain lands or portions thereof shall be restored to application and entry under other applicable public land laws, including the mineral leasing laws. (64 Stat. 1033, 1035)."

It is clear that the exclusion of the lands in question in this case from the National Monument by the Act of September 25, 1950, terminated the withdrawal of these lands. Cf. Edwin L. Doheny et al., A-26868-26897 (July 13, 1954). However, before the land could become subject to application under the applicable public land laws an order of restoration was required. The order of September 26, 1951 was for this purpose. A general provision of this order provided in part as follows:

> "This order shall not otherwise become effective to change the status of such lands until 10:00 a.m. on the 35th day after the date of this order. * * * "

However, this order in one paragraph thereof dealt specifically with the land in question along with certain other lands. As to these lands, the order stated that they had been classified for lease and sale for homesites only under the Small Tract Act and had been opened to application under that Act by California Small Tract Classification Order No. 279 of June 22, 1951 (16 F.R. 7167).

To the extent that this order recognized the filing of applications as to the land in question prior to the date of the change in the status of the land, it constituted a departure from the previous practice of the Department of refusing to recognize applications filed prior to the date when the land becomes subject to application. However, it must be construed, as is every order restoring land to the operation of the public land laws, according to its terms. Rachel S. Preston, 63 I.D. 40, 44 (1956).

Therefore, in determining the priority of applications filed for the land in question, the provisions of the classification order of June 22, 1951, are deemed to be controlling.

The classification order, in pertinent part, provides that applications filed prior to June 4, 1951 shall be effective upon the date the order is signed. Lands not covered by this provision will be subject to "ninety-day preference period for qualified veterans of World War II from 10:00 a.m. August 24, 1951, to close of business on November 22, 1951"; the advance period for veterans'simultaneous filings was from June 4 to August 24. After the termination of the preference period, the land was declared open to application by the public generally. The classification order makes no provision for special drawing procedure as outlined in 43 CFR, 1952 Supp., 257.8.

A proper small tract application filed by Mr. Young, a veteran, was received in the Los Angeles Land Office on June 22, 1951. On August 20, 1951, Mr. Sampson, who is also a veteran, filed with the land office a "Drawing Entry Card", Form 4-775. Mr. Sampson asserts he read of the drawing in the veterans' affairs column of the local newspaper. Three days later Mr. Young was notified by the Manager that the land applied for " *** had not been restored to application under the public land laws when it was eliminated from the National Monument, therefore your application must be rejected." However, because of the authorization from the Director permitting the classification order to stand, this rejection of the application was not finalized.

Subsequently, a drawing was held. The record is in conflict as to the date of the drawing. Mr. Sampson states that on November 30, 1951, he received by registered mail notification that he was a successful applicant in the drawing and was told the tract had been assigned to him and he had thirty days in which to complete the filing of the enclosed lease application. The Manager indicates the drawing was held approximately December of 1951 or January of 1952. Lease Form 4-776 was received in the land office from Mr. Sampson on December 4, 1951.

A three-year small tract lease was issued to Mr. Young on January 9, 1952. On January 15, Mr. Sampson was written that his application had been superseded by that of a veteran of World War II, whose application was filed prior to his. Two days later Mr. Young was mailed a decision signed by the Manager which held his lease for cancellation because the lease was erroneously issued, "as it should have been issued to Edmund P. Sampson, who was the successful party in a drawing held in this office." Mr. Young was given the right of appeal. The decision gave no information as to the serving of adverse parties. The record does not indicate when the decision was received by Mr. Young. His appeal, which requested the opportunity to submit substantiating evidence, was received by the land office on February 20, 1952. Mr. Sampson was written on January 18 that his "lease will be picked up as soon as we receive a reply to the Decision this office sent Mr. Glenn Young ***. You will be notified by mail when your lease can be issued." The appeal of Mr. Young was transmitted by the Manager to the Regional Administrator, San Francisco, California. A year later the regional office informed Mr. Young that his appeal had been accepted and requested additional information which was furnished. Shortly thereafter, the regional office suggested to the Manager that Mr. Young should be advised that if his appeal is withdrawn, that the decision of January 17, 1952 would be reversed and a lease issued in his favor.

Nearly three years after this suggestion by the Regional Chief, the Manager, in a letter dated January 11, 1956, wrote Mr. Young as follows:

> "By Memorandum * * * our regional Administrator authorizing the lease be retained in your favor, we are herewith offering you a two-year Renewal lease in which to construct the cabin required for ownership of the land. * * * One copy of the lease will be mailed to you after issuance. This Renewal will cover the period from January 9, 1955 to January 9, 1957."

The Mail Receipt shows this letter was received by Mr. Young on January 23, 1956. No action was taken by Mr. Young within a 30-day period, after which time it was assumed by the land office that the applicant, Mr. Young, was not interested in the extension. However, no return or compliance date was indicated in the letter of January 11, 1956. On March 1, 1956, Mr. Young appeared in the land office and filed the renewal forms and paid the required rental. This application was suspended pending further action in both cases. On March 7, the application of Mr. Sampson was rejected because of the issuance of the lease to Mr. Young. Mr. Sampson made a timely appeal and served notice on the adverse party. The cases were then transmitted to the Director for consideration of the appeal.

The governing regulation at the time of the filing of the "Drawing Entry Card" by Mr. Sampson provided for special drawing procedure at the discretion of the regional administrator or the Director when the circumstances necessitated or warranted such special procedure. In such event, the classification order would state that the special procedure will be used and that a drawing, limited to persons claiming veteran's preference, will be held. 43 CFR, 1952 Supp., 257.8(a). California Small Tract Classification Order No. 279 makes no provision for this special procedure. An offer to lease a site under the small tract act must be filed on Form 4-776, "Offer to Lease and Lease under Small Tract Act." 43 CFR, 1952 Supp., 257.7(a). The "Drawing Entry Card" filed by Mr. Sampson was not a proper application under the governing regulations and should have been rejected by the Manager. It was not within the discretion of the Manager, in the absence of a specific provision therefor in the classification order, to hold a drawing. The drawing being invalid, Mr. Sampson can assert no claim arising from this drawing.

It is regrettable if appellant relied on the information in the newspaper and the procedural errors of the Manager. It is well settled, however, that reliance by a private person on information furnished him by an employee of the bureau cannot operate to vest in such a person any right that is not authorized by law. Cf. Fred and Mildred M. Bohen, et al., 63 I.D. 65,67 (1956).

Does Mr. Sampson have any rights flowing from his filing Form 4-776 on December 4, 1951? An application for a small tract which is filed after another lease application has been filed for the same land should not be rejected for that reason alone. Minta Harper Dozier, A-27221 (November 17, 1955). The classification order provides that veterans' preference period will continue until November 22, 1951. The lease offer of Mr. Sampson was received after this preference period had terminated and appellant would thereafter have rights only as a general public applicant. Mr. Young, having filed his application on June 22, 1951 would have priority in time as well as veterans' preference to the tract. Cf. Warren E. Portenier, A-27212 (November 14, 1955).

Mr. Sampson avers in his appeal that a lease was issued to Mr. Young, that "Mr Young's legal rights" have expired because of his failure to extend the lease, and that appellant's application should have been processed through normal channels for approval. When a small tract lease is issued to a qualified applicant, all pending applications for the identical land are rejected and have no suspension effect whereby preference can be successfully claimed if the lessee does not retain his lease. Therefore, the application filed by Mr. Sampson was subject to rejection on the date of the issuance of the lease to Mr. Young.

The governing regulation at the time of the expiration of the lease did provide that small tract lease offers for lands in terminated small tract leases will be processed in the order in which they are filed after the lands become subject to appropriation. 43 CFR, 1954 ed., 257.20(c). However, at the time of the expiration of the lease the appellant in fact had no valid application on file in the land office. Regulations have since been amended to provide that such terminated, canceled, or relinquished tracts are not subject to further application until an order is issued making the tract available. 43 CFR, 1956 Supp., 257.18(a). It is concluded that the Manager should have rejected the appellant's application on January 9, 1952, when the lease was issued to Mr. Young. The fact that the appellant's application was not rejected until after the term of the Young lease had expired does not result in any new right to a lease arising under that application. Accordingly, the rejection of the appellant's application is affirmed.

Turning now to the interests of Mr. Young, we find the three-year lease issued on January 9, 1952 was a valid lease. It was held for cancellation. As previously stated, the drawing was not valid or binding, therefore there was no reason for holding the lease for cancellation. Mr. Young was correct in appealing the cancellation decision. Normally a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. Since action on the appeal has been administratively delayed and the status of the lease after the Manager's decision of January 17, 1952 holding the lease for cancellation has been somewhat doubtful, it is deemed appropriate to extend the period of the lease beyond the normal expiration date of the lease to afford Mr. Young an opportunity to improve the tract without undue hardship. Mr. Young is therefore given a one-year renewal of the lease commencing on the date this decision becomes final. When this decision becomes final the case record will be remanded through the Bureau's Assistant to the State Supervisor, California, to the Manager for further appropriate action if all else be regular.

Edmund Parker Sampson is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken by Mr. Sampson, then the adverse party to be served is: Mr. Glenn D. Young, 10822 So. Milano, Norwalk, California.

Earl J Thomas

Acting Director

Enclosure

DISTRIBUTION:

Mr. Edmund Parker Sampson (Certified Mail)
Mr. Glenn D. Young (Regular Mail)
Lands Staff Officer
Appeals List No. 1
EVJ-MAG

LO(Sac)

SMALL TRACT * 1 Generally

RULES OF PRACTICE * 9 Service on Adverse Party

An appeal to the Director will be dismissed where the record shows that the adverse party was not served with a copy of the appeal as required by the rules of practice.

Where a report of field examination indicates that a mining claim may be valid and there is insufficient basis for initiation of a contest against the mining claim; a small tract application in conflict therewith is properly rejected.

John P. Ryan, Sacramento 052705 (March 27, 1959)

LO

In reply refer to:
Sacramento 052705
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 27, 1959)

Certified Mail
Return Receipt Requested

DECISION

John P. Ryan : Small Tract Application

Appeal Dismissed

John P. Ryan has appealed from a decision of the Manager which rejected his small tract application because the land had been classified as mineral in character, valuable for gold, and because the land is occupied by valid mining claims.

The record indicates that the land under application is occupied by a mining claim of Robert Litsch, of Shasta, California. The record reveals further that by letter of April 15, 1958 of this Bureau Mr. Ryan was allowed 15 days from receipt to serve a copy of the appeal on Robert Litsch, the mining claimant. The letter stated further that the appellant would be allowed 15 days from service of notice to furnish directly to the office of the Director, Bureau of Land Management, Washington 25, D. C. proof of such service in accordance with the regulation in 43 CFR 221.4 and 221.95. The certified mail return receipt shows that the Bureau's letter was received by Mr. Ryan on April 28, 1958. The time allowed has now expired and no evidence of service has been filed. Accordingly, the appeal is hereby dismissed. Cf. Charles Waldon Folsom, A-27428 (January 31, 1957).

Even if the procedural defect were not present, there would be no basis for disturbing the Manager's decision as the field report in the record tends to indicate that the mining claim on the land is valid and that there is insufficient basis for initiation of contest proceedings against the claim. Therefore, it appears that rejection of the application was warranted.

Mr. John P. Ryan is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. John P. Ryan (Certified Mail)
Appeals List No. 1
Lands Staff Officer (1)
CFG

LD(Sac)

SMALL TRACTS * 5 Renewal of Lease

* 6 Sales

An application for second renewal of a small tract lease is properly rejected if not timely filed; however, it may be treated as an application to purchase the tract where it is filed within a reasonable time after the expiration of the lease term and in the absence of intervening rights. In such circumstances, the case will be remanded for consideration of the purchase application.

Ruben Crudup, Los Angeles 0138434 (March 31, 1959)

In reply refer to:
Los Angeles 0138434
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

March 31, 1959

DECISION

Ruben Crudup : Small Tract

Decision of Manager Affirmed; Case Remanded

Ruben Crudup has appealed from a decision of the Manager, which rejected his application for second renewal of his small tract lease for the stated reason that the renewal application was not filed prior to the expiration of the lease (43 CFR, 1957 Supp., 257.15).

The appellant does not deny that his renewal application was not timely filed. He explains that the delayed filing was occasioned by his mistaken belief that a date stamp on the lease form was the date of his lease. A lessee is presumed to know the effective date and terms of his lease and the responsibility for such knowledge must rest upon him. Cf. Jimmie Deones, A-27539 (February 11, 1958). The Manager's action in refusing to renew the appellant's lease because he did not make timely application for renewal was proper, and the Manager's decision is affirmed. Cf. Minta Harper Dozier, A-27221 (November 17, 1955).

However, the application form on which the appellant stated he wished to renew his lease, can be construed as either a renewal application or an application for purchase of the tract. Francis Thurston Bussell, Los Angeles 0101920, March 25, 1958. Even though the application was filed several days after the termination of the lease term, it may be considered on its merits as a purchase application, in the absence of intervening rights. John D. Freil, BLM 033598 (Ala.), August 29, 1958. The record indicates the appellant has made substantial progress in constructing improvements upon the land, * which construction he indicated at the time of filing his application for second renewal was valued in excess of $3,000.

The case is remanded to the Manager, through the Assistant to the Bureau's State Supervisor at Los Angeles, California, for consideration of the application to purchase in accordance with regulatory requirements and any special rules which are applicable to the land here involved. Arthur C. Gerber, Los Angeles 0145072, (February 9, 1959).

For the Director:

---

* The lease contemplated use of the land for residence purposes.

DISTRIBUTION:

Mr. Ruben Crudup (Regular Mail)
Asst. to SS (Los Angeles) w/Case File, Los Angeles 0138434
Lands Staff Officer
Appeals List No. 1
MAG

50991

LO(Sac)

SMALL TRACTS * 3 Classification

Small tract applications rejected on grounds of adverse classification will be remanded where the record does not provide sufficient information for an informed determination as to the proper classification of the land.

Elsie Sheldon et al., Los Angeles 0131978, etc. (April 3, 1959)

RO

In reply refer to:

Los Angeles 0131978, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 3, 1959

DECISION

Elsie Sheldon et al.	:	Small Tract Applications

Cases Remanded

Elsie Sheldon and five others 1/ have appealed from a decision of the Manager which rejected their small tract applications for five acre tracts in the NE¼NE¼, sec. 10, T. 10 N., R. 11 W., S.B.M., California, because the land is not suitable for small tract development.

The field examination disclosed a mining claim in the SW¼NE¼NE¼, sec. 10. However, a mineral examination has not been made to ascertain if the lands are mineral in character, nor have the lands otherwise been reported as being unsuitable for small tract purposes. Therefore, the rejection of the applications was premature. The applications should have been suspended pending the mineral examination and receipt of a further report in the matter, as recommended by the field examiner in his report of October 9, 1956.

Accordingly, the cases are remanded to the Manager through the Assistant to the State Supervisor at Los Angeles, California, for a determination as to the proper classification of the land.

For the Director:

1/ The names of the other appellants and the serial number of their applications are as follows:

Herbert Howard	Los Angeles 0131996
Raymond E. Miller	" 0132110
Edgar E. Veit	" 0132112
Wilmer J. Veit	" 0132113
Margaret J. Smith	" 0143865

DISTRIBUTION:

Mr. Clayton Straub, Attorney at Law (Regular Mail)
Each appellant (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

ZD(Soc)

ST

ADUDICATION * 6 Delegation of Authority

An appeal will be dismissed, where the "appellant" advises the Bureau that the notice of appeal was filed without his knowledge or authorization, and the record does not show that the person who prepared and filed the appeal was authorized to practice before the Department pursuant to the regulations.

Anthony Bernard Herbert, Los Angeles 0122723 (April 3, 1959)

RV

In reply refer to:

Los Angeles 0122723
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 3, 1959

Certified Mail
Return Receipt Requested

DECISION

Anthony Bernard Herbert : Small Tract
:
:

Appeal Dismissed

Anthony Bernard Herbert purportedly appealed from that part of the Manager's decision dated November 25, 1958 which increased the annual rental and purchase price of his small tract after a re-appraisal of the value of the land was made pursuant to an application to renew the small tract lease.

Mr. Herbert was allowed a small tract lease for a three year term. A timely application to renew the lease was filed, showing the required improvements had not been placed upon the land for reasons which the Manager deemed suitable to support a renewal of the small tract lease. Thereafter, the Manager issued his decision offering to renew the lease at the increased rental and purchase price. The new rental was paid together with a notice of appeal, with the small tract lessee's name typed thereon as a purported signature, protesting the increased rental and purchase price. On December 24, 1958, the appellant advised the land office that the appeal had been filed without his knowledge or approval. The lessee states that he applied for the renewal of his small tract at the request of a relative, since he personally did not want the land anymore. No renewal of the small tract lease has issued.

The person who attempted to appeal on behalf of the small tract lessee had not been authorized by the purported appellant to act for him, and the record does not show that such person was authorized to practice before the Department under the provisions of 43 CFR, 1954 ed., 1.3. Under such facts, no valid appeal was actually filed and the appeal is subject to summary dismissal.

Accordingly, the appeal is dismissed. The case is remanded to the Manager, through the Bureau's Assistant to the State Supervisor at Los Angeles, California, for an investigation to determine whether a small tract lease should issue to Lt. Herbert in view of the additional information filed since the "appeal."

Lt. Herbert is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Lt. Anthony Bernard Herbert (Certified Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

LA(Sac)

SMALL TRACTS * 2 Application
* 3 Classification

When land has been classified as unsuitable for small tract purposes, the classification, in the absence of an error which appears on the face of the record, will not be disturbed unless positive and substantial evidence is adduced to show that the land is suitable for such development.

Land which is cut by washes and is subject to flood hazards is not suitable for small tract use and applications filed for such land must be rejected.

Joseph Albanese, Los Angeles 0130834 (April 8, 1959)

In reply refer to:

Los Angeles 0130834
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 8, 1959

Certified Mail
Return Receipt Requested

DECISION

Joseph Albanese	:	Small Tract Application

Acting Manager's Decision Affirmed

Joseph Albanese has appealed from a decision of the Acting Manager which rejected his small tract application because the land applied for is cut by washes and is subject to flood hazards, and therefore not suitable for small tract use.

The land in issue and other lands, aggregating approximately 88,400 acres in San Bernardino County, California, were classified as suitable for disposition under the Small Tract Act by Classification Order No. 563 of May 15, 1957, and published in 22 F.R. 3895. On December 12, 1957, the San Bernardino County Planning Commission recommended that in cases where small tracts were cut by washes, and thereby subject to flood hazards, be withheld from entry. In accordance with such recommendations, the lands previously classified for small tract purposes by Order No. 563 were reexamined and those tracts found to be cut by washes were deleted from the order. Among the lands found to be cut by washes and subject to flood hazards was the tract sought by the appellant.

A small tract application is properly rejected where the land is subject to flash flooding. Lawrence and Joan Sheehan, Nevada 025585 (March 9, 1959).

The appellant has offered no substantial or convincing evidence to rebut the classification. Therefore, the decision of the Acting Manager is affirmed. Cf. George P. and Helen A. Swartz, Nevada 039518 (June 16, 1958).

Mr. Joseph Albanese is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Joseph Albanese (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

52694

LO(Sac)

SMALL TRACT * 5 Renewal of Lease

Where a small tract lessee has applied for the renewal of his small tract lease on the grounds that nonrenewal of the lease would create undue hardship to him, any renewal granted will be in the form of a new lease contract in accordance with the regulation 43 CFR 257.15, 1957 Supp. The terms of the new lease in such a case will reflect conditions existing at the time the new lease is issued including a reappraisal of the land based on the current market value of the land.

Keaton Kurtis King, Los Angeles 0134762 (April 13, 1959)

f0

In reply refer to:

Los Angeles 0134762
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 13, 1959

Certified Mail
Return Receipt Requested

DECISION

Keaton Kurtis King : Small Tract (Renewal)

Decision of the Manager Affirmed

Keaton Kurtis King has appealed from a decision of the Manager which granted a renewal of his small tract lease in the form of a new lease as provided by the departmental regulation 43 CFR 257.15, 1957 Supp. The new lease issued provided for a one year lease period and for the purchase of the tract at the appraised price of $500.

Mr. King has appealed stating in substance that he applied for a renewal of his old lease whereas a new lease was issued by the Manager calling for a new and higher purchase price. Mr. King alleges hardship and states that he is appealing the new purchase price and is asking for a new decision providing for the renewal under the same terms as the original lease issued July 21, 1955.

The applicable regulation, 43 CFR 257.15, 1957 Supp., relates in substance that any renewal granted will be in the form of a new lease and that the term of the lease and any special conditions will be established by the officer who signs it. The regulation 43 CFR 257.13, 1957 Supp. states in pertinent part that the net purchase price will be the appraised value* of the unimproved land as of the date of the lease issued minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of the application to purchase.

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* "Appraised value" as expressed by the courts means the best price the owner can obtain after reasonable and ample time. People v. Dowd, 194 N.Y.S. 3, 4. It has been defined as what a willing seller will take and a willing buyer will give in the open market. Color Oil and Gas Company v. Franzel, 109 S.W. 328, 333.

It is clear from the foregoing that any renewal lease issued must be in the form of a new lease and that any such lease must reflect any change in the terms of the lease appropriate as of the date the new lease issued including any change in the value of the land as reflected by the going market value of similar type lands in the area. Since the appraisal of the land has been prepared in accordance with approved Bureau standards and the appellant has not shown that the appraisal is unreasonable or excessive, it is considered to be correct. Cf. Jerry R. Crouse, A-27241 (December 23, 1955).

Therefore, the decision of the Manager is affirmed.

Mr. King is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Keaton K. King (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

52694

LD(Sec)

SMALL TRACTS * 5 Renewal of Leases

An application for a second renewal of a small tract lease is properly rejected where the lessee's excuse for not constructing substantial improvements on the land was that his employment caused him to move from the vicinity of the tract during the lease term and where he failed to show that nonrenewal would work an extreme hardship upon him.

Lewis E. Levitan, Los Angeles 0112233 (April 15, 1959)

ho

In reply refer to:

Los Angeles 0112233
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 15, 1959

Certified Mail
Return Receipt Requested

DECISION

Louis E. Levitan : Small Tract
:
:

Manager's Decision Affirmed

Louis E. Levitan has appealed from the Manager's decision, dated January 9, 1959, rejecting his application for a second renewal of a small tract lease. The stated reasons for rejection are that the lessee did not show that his failure to construct improvements on the land was justified, and that nonrenewal of the lease would work an extreme hardship on him.

The appellant alleges that the nature of his employment caused him to move from the vicinity of the tract shortly after he acquired the lease. This, he states, rendered it financially inopportune for him to complete any substantial improvements. These circumstances and the fact that he had caused a survey to be made and that he had placed a concrete foundation slab on the tract are presented by the appellant as grounds for a second renewal of his lease. Essentially, these are the same grounds urged by the appellant to secure a renewal granted August 5, 1957.

Where an application for renewal is timely filed, but the required improvements have not been erected, a renewal may be allowed where the failure to erect improvements is justified, and the appellant shows that a nonrenewal of his lease would work an extreme hardship. Henry Offe, 64 I.D. 52 (1957). However, it has been consistently held that the bare lack of finances does not justify a failure to construct the required improvements. A. John Davis, Juneau 010179 (October 17, 1958). The fact that the appellant was not in the vicinity of the tract by reason of business or employment elsewhere does not excuse him from the obligations imposed by the lease to construct improvements since there is no requirement that he must do the work himself. Russell L. Coe, A-27227 (January 24, 1958). The pouring of a cement slab is not a sufficient basis for renewal of a small tract lease.

Holbert E. Thompson, et al., Los Angeles 0101557 (July 22, 1958). The loss of the amount expendedby the appellant in rentals, filing fees, and in locating the tract cannot be regarded as a sufficient loss to justify a renewal of the lease. Jimmie Deones, A-27539 (February 11, 1958). Therefore, conceding the material assertions of the appellant to be true, Mr. Levitan has not shown that the failure to improve the tract was justified, and has failed to show that a nonrenewal of the lease would work an extreme hardship upon him.

The decision of the Manager is, accordingly, affirmed.

The appellant will have a period of 90 days within which to remove his improvements from the land or to make other disposition thereof. If the improvements are disposed of to a person other than a subsequent lessee they must be removed from the land within the 90 day period, otherwise the improvements will become the property of the United States. (43 CFR, 1957 Supp., 257.19(c)).

The appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221 as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Louis E. Levitan (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
LLM

LO (Sac)

SMALL TRACTS * 2 Application
* 3 Classification

RECREATION ACT * 1 Generally

A small tract application is properly rejected where the land sought is valuable for public recreational purposes and has been classified for disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended.

James E. Bardsley, Los Angeles 0130604 (April 20, 1959)

In reply refer to:

Los Angeles 0130604
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 20, 1959

Certified Mail
Return Receipt Requested

DECISION

James E. Bardsley	:	Small Tract Application

Decision of the Chief, Lands Adjudication Unit, Affirmed

James E. Bardsley has appealed from a decision of the Chief, Lands Adjudication Unit, which rejected his small tract application for the reason that the land applied for is valuable for public recreational purposes. The land in issue, and other lands, were classified as suitable for disposal under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C., 1952 ed., Supp. V, sec. 869), as requested by the County of San Bernardino, California.*

The question in issue is one of proper classification and the appellant has submitted no positive and substantial evidence that the classification of the land as suitable for disposal under the Recreation and Public Purposes Act is erroneous.

A small tract application is properly rejected where the land sought is chiefly valuable for public recreational purposes. Madeline Annie Albert et al., Sacramento 050009, etc. (May 16, 1958). It is the express policy of the Department of the Interior to make public lands valuable for public recreation purposes available for use of the general public. See Policy Statement, approved by the Secretary of the Interior on April 16, 1958. Cf. Burton C. Corwin et al., Sacramento 053371, etc. (March 12, 1959).

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the classification of the land. The appellant's application was properly rejected. William H. Tooker et al., Los Angeles 0133102, etc. (March 2, 1959). This is consistent with Mrs. Claudia H. Smith et al., A-27781 (December 12, 1958).

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* It appears that the County desires to use the lands for school and park purposes.

Accordingly, the decision of the Chief, Lands Adjudication Unit, is affirmed.

Mr. James E. Bardsley is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. James E. Bardsley (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

LA(Sac)

SMALL TRACTS * 5 Renewal of Lease

Applications for renewal of small tract leases are properly rejected where the lessees have not shown that nonrenewal of the leases would work an extreme hardship on them.

Bessie Matloff et al., Los Angeles 0144269, etc. (April 21, 1959)

40

In reply refer to:
Los Angeles 0144269
0144619
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 21, 1959

Certified Mail
Return Receipt Requested

DECISION

Bessie Matloff

John Frank Hampel

: Small Tracts

Decisions of Manager Affirmed

Bessie Matloff and John Frank Hampel have appealed from decisions of the Manager, which rejected their applications for renewal of their small tract leases for the stated reasons that they failed to construct improvements * and thereby qualify to apply for purchase of the tracts, and did not make a satisfactory showing that their failure to do so was justified and that nonrenewal would work an extreme hardship on them.

Mr. Hampel states his failure to construct the required improvements on the land was due to illness and cost of surgery which precluded his expending money in construction on the tract, also to the necessity for flood control measures on the land before any construction could be undertaken. He asserts the land is situated in a wash and that he is presently financially unable to undertake the expenditures which would be involved in a diversion of the water.

Mrs. Matloff explains that her failure to construct the improvements was due to personal illness and expenses in connection with medical care required. She contends she was informed that 51 percent construction would entitle her to a renewal lease. Even assuming that such an erroneous statement was made by a Bureau employee, reliance by a private person on information furnished her by an employee of the Bureau could not operate to vest in such a person any right which is not authorized by the law or regulations. Cf. Charles L. Day, A-26233 (August 31, 1951).

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* Both lessees agreed, under the terms of their 2-year leases, to construct upon the leased land substantial improvements appropriate for the use for which the leases were issued; namely, homesite purposes.

The appellants have not shown pursuant to 43 CFR, 1957 Supp., 257.15(c), that nonrenewal of the leases would work extreme hardship on them since no improvements have been erected. Jimmie Deones, A-27539 (February 11, 1958).

Accordingly, the decisions of the Manager are affirmed.

Bessie Matloff and John Frank Hampel are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mrs. Bessie Matloff (Certified Mail)
Mr. John Frank Hampel (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MAG

LD(Sac)

SMALL TRACTS * 5 Renewal of Lease

An application for renewal of a small tract lease is properly rejected where the lessee has not established that nonrenewal of the lease would work an extreme hardship on her.

Odalia Odessa Wright, Los Angeles 0141796 (April 22, 1959)

LD

In reply refer to:
Los Angeles 0141796
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 22, 1959

Certified Mail
Return Receipt Requested

DECISION

Odalia Odessa Wright : Small Tract

Decision of Manager Affirmed

Odalia Odessa Wright has appealed from a decision of the Manager, rejecting her application for second renewal of her small tract lease for the stated reasons that she failed to construct improvements and thereby qualify to apply for purchase of the tract, and did not establish that her failure to do so was justified and that nonrenewal would work an extreme hardship on her.

The record discloses no improvements have been placed on the tract. From the appeal it appears that the appellant's failure to construct improvements on the tract was due to a lack of finances occasioned by unusual family expenditures arising out of several automobile accidents, and serious illness requiring medical attention as well as lack of employment during such period.

Since the appellant has not placed a structure on the land or expended any time or money looking toward development of the tract, nonrenewal of the lease would not be an extreme hardship on her. Jimmie Deones, A-25739 (February 11, 1958).

The decision of the Manager is therefore affirmed.

Mrs. Odalia Odessa Wright is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations contained in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure
DISTRIBUTION:
Mrs. Odalia Odeasa Wright (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MAG

52694

LO(Sac)

CLASSIFICATION * 3 Lands Mineral in Character

SMALL TRACTS * 1 Generally
* 2 Application

That land is mineral in character, standing alone, is not a sufficient basis for the rejection of a small tract application therefor.

Where it appears that land sought under a small tract application is in an active gravel mining operation and in a gravel mining claim (located prior to July 23, 1955) which at this time has the semblance of validity, the small tract application is properly rejected.

A placer mining location for a common variety of gravel is invalid unless located and perfected by a discovery of a deposit having a present actual market value prior to the enactment of the Act of July 23, 1955, 30 U.S.C. 601 *et seq.*

Joseph C. O'Keefe, Sacramento 054580 (April 22, 1959)

In reply refer to:
Sacramento 054580
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

April 22, 1959

Certified Mail
Return Receipt Requested

DECISION

Joseph C. O'Keefe : Small Tract

Decision of Manager Affirmed as Modified

Mr. O'Keefe 1/ has appealed from a decision of the Manager which rejected his small tract application because the " *** land applied for has been classified as mineral land, valuable for placer gold, commercial gravel. It is occupied by a valid mining claim."

The appellant asserts that the land in issue is subject to a valid mining claim 2/ by his brother-in-law, John J. Azivido and asks why the land in the mining claim cannot be divided into five-acre tracts if the mining claim is relinquished.

That the land is mineral in character is not, standing alone, a sufficient basis for the rejection of the small tract application. The Small Tract Act, as amended, 43 U.S.C. 682(a) dictates a separation of the surface and mineral estates when disposal under the act is made. If, however, it should appear that land desired for small tract entry is mineral in character and mineral development represents the highest utilization of the land and is incompatible with small tract development, then it would necessarily follow that a small tract offer for the land must be rejected.

1/ The appeal was filed by Wave L. Azivido on Mr. Keefe's behalf. The record indicates that she is a member of Mr. O'Keefe's family. Cf. 43 CFR 1.3(b)(3). In the circumstances, it appears that the appeal was properly filed.

2/ In his application the appellant stated that " *** I have not found the land to be covered by a mining claim or other claim of record."

The record indicates that substantial deposits of marketable gravel are situated on the land in issue and that Mrs. Adele NeMode, the widow of one of the locators of the North Star placer mining claim (which embraces the land in issue) is selling gravel from the North Star placer mining claim and from the adjoining Precilla placer mining claim. She holds a contract with the County of El Dorado under which the county will mine and process the gravel and pay her six cents for every yard of gravel removed. At the time of mineral examination some 10,000 yards of excellent quantity gravel had been processed and stockpiled. The North Star placer mining location had been located [3] prior to the enactment of the Act of July 23, 1955, 30 U.S.C. 601 et seq.

It appears from the report of field examination that the North Star placer mining location is an active mining operation (Cf. J. W. Allen et al., v. E. A. Mohler et al., A-26931 (November 5, 1954), and Myrtle B. Muntean, A-25646 (June 28, 1949), and that the mining claim at this time has the semblance of validity. In the circumstances, rejection of the small tract application was proper. See John P. Ryan, Sacramento 052705 (March 27, 1959).

The decision of the Manager is affirmed as modified.

Joseph C. O'Keefe is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:

Mr. Joseph C. O'Keefe (Certified Mail)
Lands Staff Officer
Minerals Staff Officer
Appeals List No. 1
FF

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[3] The record does not show whether the mining claim had been perfected by a discovery of marketable gravel prior to the enactment of the Act of July 23, 1955, supra. A placer location located for a common variety of sand and gravel is invalid when it is not perfected by a discovery of deposits having a present actual market value prior to July 23, 1955. United States v. Clear Gravel Enterprises, Inc., Contest Nos. 189 and 190 (December 16, 1958). See also United States v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959).

appeal to Sec
affirmed A 28217
4-13-60 LO(Sec)

SMALL TRACTS * 4 Priority Rights

Where a small tract applicant is awarded a preference right to a tract which conforms most closely to his original application he will not be allowed to exercise this right to the detriment of another small tract lease holder whose tract conforms less to the land described in the applicant's original application than other tracts made available to the applicant.

Russell Stewart Lee, Sacramento 050062 (June 18, 1959)

LO

In reply refer to:
Sacramento 050062
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

June 18, 1959

Certified Mail
Return Receipt Requested

DECISION

Russell Stewart Lee : Small Tract

Decision of the Manager Affirmed

Mr. Russell Stewart Lee has appealed from a decision of the Manager of the Sacramento, California, Land Office, dated March 2, 1959, reassigning small tract leases pursuant to a decision promulgated by the Director in the case of Russell Stewart Lee, Sacramento 050062 (March 26, 1958).

The appellant filed an application under the act of June 1, 1938, as amended, for a 5-acre tract described as the E$\frac{1}{2}$NW$\frac{1}{4}$SE$\frac{1}{4}$NW$\frac{1}{4}$, sec. 23, T. 33 N., R. 5 W., M.D.M., on April 8, 1955. This land was not then classified for small tract disposal, but in April, 1957, the land was so classified and the appellant was notified that he was entitled to a preference right to purchase a tract provided he would conform his application to the area and dimensions of the tract specified in the classification order and tender the fair market value of the land. Cf. 43 CFR 257.5(a).

The land described in the appellant's application was a rectangular 5-acre tract running in a north-south direction. However, the classification order divided the area into smaller numbered tracts, rectangular in shape and running in an east-west direction. The land for which the appellant had applied was affected by tracts numbered 10 through 14; 50% of tracts 10, 11, 12, and 13, and 25% of tract number 14, consisting of land included in the appellant's original application.

Pursuant to the classification order the appellant was awarded tract number 10. However, as he was dissatisfied with this tract, the appellant appealed to the Director. In sustaining the appeal the Director stated that where there are two or more small tract applicants entitled to priority, the first applicant is entitled to first consideration. Thus, where the tract applied for is classified into two or more small tracts, the first applicant is entitled to that tract which most nearly conforms to his application and his proposed use. The case was remanded with instructions that a determination be made by the local officials of the Bureau as to which of the tracts most nearly conforming with the appellant's original application would be suitable as a residence site. Russell Stewart Lee, Sacramento 050062 (March 26, 1958); confirmed on appeal, Charles A. Taylor et al., A-27733 (December 15, 1958).

As a result of these two decisions, the local Manager, with the concurrence of the Officer in Charge of the Northern Field Group, awarded tract number 13 to the appellant. Others affected by these decisions have either failed to appeal, concurring with the apportionment made by the local Manager, or failed to make a timely appeal. However, the appellant is again dissatisfied with the tract awarded to him and has appealed.

The appellant now desires that he be awarded tract number 14. He contends that Mr. Taylor, the person to whom the tract was awarded, "overfiled" appellant's exact application and that appellant has, accordingly, a superior right to any land given to Mr. Taylor, as he, the appellant, first filed on the land. The record, however, indicates that Mr. Taylor originally applied for the S½S½S½NW¼SE¼NW¼, N½N½SW½SE¼NW¼, N½S½N½SW¼SE¼NW¼, only a fraction of which overlaps the area described in the appellant's application, but which includes all of what is now tract number 14. Further, only 25% of tract number 14 is composed of land included within the appellant's application as compared with 50% of the land of the remaining tracts. It follows that this tract conforms least of all the tracts involved to the land described appellant's original application. Therefore, to allow the appellant to enter tract number 14 would not only be at variance with the Director's previous decision that a prior applicant is entitled to that tract which most closely conforms to his original application, Russell Stewart Lee, supra, but would also be inequitable to Mr. Taylor.

The appellant also complains that he is to be required to purchase improvements which he cannot use and does not want. Attention is drawn to the footnote in the case of Charles A. Taylor et al., supra. It is therein made quiet clear that the appellant is to reimburse Mr. Taylor for the reasonable value of all permanent improvements which are left on the land and which are of value to the person acquiring it.

The assertions of the appellant that he is the victim of the Manager's "arbitrary, unreaslistic, scapegoat decision," and his allegations of fraud and collusion on the part of Bureau employees are wholly without corroboration and need not be discussed.

The decision of the Manager is, accordingly, affirmed.

Mr. Russell Stewart Lee is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, the adverse parties to be served are as follows:

James F. Allen
1659 - 46th Avenue
Oakland 1, California

James R. Durkee
P. O. Box 892
Project City, California

Charles A. Taylor
P. O. Box 42
Summit City, California

For the Director:

Enclosure

DISTRIBUTION:

Mr. Russell Stewart Lee (Certified Mail)
Mr. James F. Allen (Regular Mail)
Mr. James R. Durkee (Regular Mail)
Mr. Charles A. Taylor (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LIM

LO(Sac)

SMALL TRACTS * 5 Renewal of Lease

PUBLIC LANDS * 10 Appraisal

Protests against the reappraisal of land offered for sale under the Small Tract Act are properly dismissed where the protestants fail to present substantial, positive evidence that the current appraisal is unreasonable or excessive.

The terms of a renewal of a small tract lease will reflect conditions existing at the time the new lease is issued including a reappraisal of the land based on the current market value of the land.

Frank X. Linneen et al., Los Angeles 097292 etc. (July 9, 1959)

f0

In reply refer to:
Los Angeles 097292
097676
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 9, 1959

Certified Mail
Return Receipt Requested

DECISION

Frank X. Linneen :
: Small Tracts
Jack M. Linneen :

Decision of the Manager Affirmed

The above parties have appealed from a decision of the Manager dismissing their protest 1/ against the reappraisal of two five-acre tracts covered by leases issued to the appellants under the Small Tract Act of June 1, 1938, as amended (43 U. S. C. 682a).

The records indicate that small tract leases for terms of three years each, with options to purchase, were issued to Mr. Frank X. Linneen and Mr. Jack M. Linneen effective June 4 and July 22, 1954, respectively. The leases were forwarded to the lessees by regular mail. Each tract was appraised for purchase in exercise of the option at $10.00 per acre.

By letter of June 1, 1957, the lessees informed the Land Office that although they had lived at the same address of record since 1950, the leases were never received and requested renewal leases, for the reason that they had no knowledge of the leases being issued. Applications for renewal were rejected by the Manager on July 15, 1957, for the stated reason that no showing had been made that non-renewal of the leases would work an extreme hardship on them as required by 43 CFR 257.15(c). However, on September 26, 1957, the Assistant Secretary of the Interior waived the requirement for such showing in the instant cases and authorized the issuance of renewal leases on the express stipulation that renewals be offered on the basis of reappraised valuations.

On January 3, 1958, a field investigation was made and disclosed that the market value of the tracts was $70.00 per acre. The tracts were reappraised accordingly, and new leases on the basis of such reappraised valuation were offered to Mr. Frank X. and Jack M. Linneen by decisions of August 7 and 8, 1958, respectively. Messrs. Linneen protested the reappraisals and contended that the new leases should be issued at the original appraised valuation. The protest was dismissed

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1/ A joint protest filed by Messrs. Linneen.

by the Manager on January 30, 1959. It is from this decision that the protestants have appealed. 2/ In their appeal the appellants contend that the leases should be renewed under the same terms and conditions as the original leases. However, the appellants offer no evidence showing that the reappraisal of the tracts is unreasonable or excessive.

The applicable regulation, 43 CFR 257.15(a), provides in substance that any renewal granted will be in the form of a new lease and that the term of the lease and any special conditions will be established by the officer who signs it. The regulation, 43 CFR 257.13(a), states in pertinent part that the net purchase price will be the appraised value 3/ of the unimproved land as of the date of the lease issued minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of the application to purchase.

It is clear from the foregoing that any renewal lease issued must be in the form of a new lease and that any such lease must reflect any change in the terms of the lease appropriate as of the date the new lease issued including any change in the value of the land as reflected by the market value of similar type lands in the area. Since the appraisal of the land has been fixed in accordance with approved Bureau standards and the appellants have not shown that the appraisal is unreasonable or excessive, it is considered to be correct. Daniel Hicken, A-27877 (March 5, 1959). See also Keaton Kurtis King, Los Angeles 0134762 (April 13, 1959).

Therefore, the decision of the Manager is affirmed.

Messrs. Frank X. and Jack M. Linneen are allowed 30 days from receipt of notice hereof within which to comply with the requirements of the decisions of the Manager of August 7 and 8, 1958, or to appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:
Hon. Joe Holt, House of Representatives
Mr. Frank X. Linneen (Certified Mail)
Mr. Jack M. Linneen (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

2/ A joint appeal filed by Messrs. Linneen.

3/ "Appraised value" as expressed by the courts means the best price the owner can obtain after reasonable and ample time. People v. Dowd, 194 N.Y.S. 3, 4. It has been defined as what a willing seller will take and a willing buyer will give in the open market. Color Oil and Gas Company v. Eranzel, 109 S. W. 328, 333.

appeal to Sec.
Dismissed A-28237
3-29-60

SMALL TRACTS * 1 Generally

VETERANS * 3 Soldiers' and Sailors' Relief Act

ADJUDICATION * 4 Reliance

A request for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 to have a small tract lease suspended is properly denied where the request is not filed within the time prescribed by the regulations.

Reliance by a private person on information furnished to him by an employee of the Bureau cannot operate to vest in such a person any right which is not authorized by law.

Arthur Joseph Moylan, Jr., Los Angeles 0144775 (July 9, 1959)

In reply refer to:

Los Angeles 0144775
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 9, 1959

Certified Mail
Return Receipt Requested

DECISION

Arthur Joseph Moylan, Jr. : Small Tract

Decision of the Manager Affirmed

Arthur Joseph Moyland, Jr. has appealed from a decision of the Manager denying relief under the Soldiers' and Sailors' Civil Relief Act of October 17, 1940, as amended (50 U.S.C. App., 1952 ed., sec. 501 et seq). The decision stated that the small tract lease had expired and the case had been closed on the records of the Land Office.

The appellant contends that the Land Office accepted his application for "Notice of Military Service" when it was filed; that he was notified that the lease had been suspended under the relief act of 1940; that if he had been notified at the time of filing of the notice of his failure to qualify for relief, he would have made definite plans to have proper improvements on the land; and that he should be allowed a reasonable time within which to place the required improvement on the tract.

On October 10, 1956, Mr. Moyland filed application to lease a five-acre tract in sec. 15, T. 1 N., R. 10 E., S.B.M., California, under the provisions of the act of June 1, 1938, as amended (43 U.S.C., 1952 ed., sec. 682a). The lease, issued December 1, 1956, provided that the lessee was entitled to purchase the tract, within the lease period, provided the required improvements had been constructed and he had otherwise complied with the terms of the lease.

On April 21, 1958, the Land Office received notice from the appellant that he had entered military service shortly after applying for the tract. On April 30, 1958, notice of military service was filed on Form 4-975, in which the appellant claimed relief under the Soldiers' and Sailors' Civil Relief Act of 1940, supra. Since the appellant's small tract application was filed prior to his entry into military service, he is deemed to come within the purview of section 501 of the act. Cf. Russell L. Coe, A-27527, (January 24, 1958).

The Departmental regulation which is based in part upon section 501 of the above Act is 43 CFR 181.32 and this regulation provides in paragraph (b) that any lessee of public lands may gain a suspension of operation of the lease for the period of his military service and six months thereafter. However, that regulation specifically provides (43 CFR 181.32(c)) that:

> "In order to obtain the benefits mentioned, notice of military service must be given in accordance with sec. 181.24."

Sec. 181.24 requires the giving of notice of service on proper forms within six months after entry into service. The appellant states that he entered the military service on November 2, 1956, and, as stated above, the notice of military service was not filed until April 30, 1958.

Regulation 43 CFR 181.32 applies not only to small tract leases but to suspension of mineral leases based on section 506 of the act, 54 Stat. 1188, as amended, 50 U.S.C. App. sec. 566. An opinion of the Comptroller General of the United States dated July 14, 1947 in the case of Joseph W. Walton, Phoenix 078873, involving Claim No. 2496205 before the General Accounting Office, ruled that the requirement of section 506 of the act, supra, that notice be given within six months of entry into the military service is mandatory and the Department of the Interior has no authority to grant relief where late notice is filed. The provision of 43 CFR 181.32 requiring notice by the lessee to gain a suspension of a small tract lease is controlling, and under its terms no suspension of the lease is authorized in this case. Dr. Frederick A. Shannon, Phoenix 084129, (January 21, 1958).

The appellant's statement of reasons for his appeal has been carefully considered. It provides no basis for changing the decision of the Manager. The Department has stated that reliance by a person on information furnished to him by an employee of the Bureau of Land Management cannot operate to vest in such a person any right that is not authorized by law. Cf. William H. Boyd A-27440 (June 3, 1957). See also Fred and Mildred M. Bohen et al., 63 I.D. 65 (1956).

Accordingly, the decision of the Manager is affirmed.

Mr. Moylan, Jr., is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:
Hon. Cecil R. King, House of Representatives
Mr. Arthur J. Moylan, Jr. (Certified Mail)
Lands Staff Officer
Appeals List No. 1
ALR

LO(Sac)

SMALL TRACTS * 5 Renewal of Lease

An application to renew a small tract lease is properly rejected where the lessee did not construct improvements on the land during the lease period and does not establish that failure to comply with the terms of the lease was justified and that nonrenewal of the lease would work an extreme hardship on her.

Alta Hitchcock, Los Angeles 0121437 (July 15, 1959)

RO

In reply refer to:
Los Angeles 0121437
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 15, 1959

Certified Mail
Return Receipt Requested

DECISION

	:	
Alta Hitchcock	:	Small Tract
	:	

Decision of Manager Affirmed

Alta Hitchcock has appealed from a decision of the Manager, which rejected her application for renewal of her small tract lease for the stated reasons that she failed to construct improvements* and thereby qualify to apply for purchase of the tract, and did not establish that her failure to do so was justified and that nonrenewal would work an extreme hardship on her.

Where an application for renewal is timely filed but the required improvements have not been placed on the land, a renewal may be approved upon a satisfactory showing as set forth above. Henry Offe, 64 I.D. 52 (1957). However, the reasons assigned by the appellant as to employment and financial circumstances which prevented her from complying with the terms of the lease with respect to the construction of improvements, do not provide a sufficient basis for a finding under 43 CFR, 1957 Supp., 257.15(c) that her failure to meet the requirements for sale of the leased tract was justified.

Mrs. Hitchcock asserted on appeal that she must continue in her present employment in order to qualify for a pension in two years, and it would be a hardship for her to erect a building on the tract at this time; that if she built on the tract now she would not be able to reside there and vandals would carry off the improvements. She stated further that because the land is very rough it would require a considerable amount of hard work to place the tract in condition for building.

In Russell L. Coe, A-27527 (January 24, 1958) the Department held that the inability of a small tract lessee to be personally present on the tract during the lease term does not relieve him of the obligations of his lease. Nor does the bare claim of lack of finances justify failure to construct the required improvements. A. John Davis, Juneau 010179 (October 17, 1958).

---

* The lease contemplated the use of the land as a cabin site.

Since no structure has been placed on the tract and the appellant has not expended any time or money with a view to the development of the tract, it is not indicated that nonrenewal of the lease would work an extreme hardship on her. Jimmie Deones, A-27539 (February 11, 1958). The Department has held that a small tract lessee who has failed to comply with the requirements of the lease that substantial improvements be placed on the leased land is not entitled to a renewal of the lease. Cf. Minta Harper Dozier, A-27221 (November 17, 1955). The appellant is at liberty to make application for another tract of land should she later desire to do so.

Accordingly, the decision of the Manager is affirmed.

Mrs. Hitchcock is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See attached Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

John B. [illegible]

Enclosure

DISTRIBUTION:

Mrs. Alta Hitchcock (Certified Mail)
Lands Staff Officer
Appeals List No. 1
MAG

LO(Sac)

SMALL TRACTS * 6 Sales

* 7 Valuation of Improvements

Where a small tract lessee has erected a cabin of substantial construction and attractive finish, which was approved by the county building inspector, it was not proper to reject his application for purchase on the ground of inadequate improvements. The lessee has substantially complied with the requirements and should be allowed a reasonable time to construct sanitary facilities consonant with local Department of Health requirements, upon compliance with which final certificate is authorized.

Alan Mann, Los Angeles 089510 (July 15, 1959)

In reply refer to:

Los Angeles 089510
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 15, 1959

DECISION

Alan Mann : Small Tract
:
:

Decision of the Manager Reversed
Case Remanded

Alan Mann has appealed from a decision of the Manager which rejected his application to purchase a tract leased to him because "the cabin constructed is not sufficiently large to make it qualify under the Small Tract Act and it is not comparable to existing improvements in the vicinity." The decision also stated that no sanitary facilities were found at the time of examination and that "the cabin is considered a detriment to property values by land owners and lessees in the area."

The record indicates that the appellant built on the tract a 8' x 10' cabin without any sanitary facilities. The report of field examination discloses that the cabin is of substantial construction and attractively finished. The record does not disclose that the lessee was ever informed of the standards to be expected of him. Nothing in the record supports the allegation that the appellant's cabin "is considered a detriment to property values by land owners and lessees in the area." In the absence of such evidence, no consideration can be given to its implications. Furthermore, the record indicates that the cabin was approved by the county building inspector. It therefore, complies with the requirements of the building code of the county where the property is located.

It is felt that the appellant has substantially complied with the small tract law and regulations and under the circumstances he should be allowed a reasonable time to construct sanitary facilities consonant with local Department of Health requirements. Upon such compliance, final certificate is authorized.

Accordingly, the decision of the Manager is reversed and the case is remanded to the land office for further appropriate consideration consistent with this decision.

For the Director:

John B. Piccolo

DISTRIBUTION:

Mr. Leonard Cohen, Attorney for appellant (Regular Mail)
Mr. Alan Mann (Regular Mail)
Lands Staff Officer
Appeals List No. 1
AIR

57714-59

appeal to Sec
affirmed A 28234 LO(Sec)
5-23-60

SMALL TRACTS * 3 Classification

When land has been classified as unsuitable for small tract purposes, the classification, in the absence of an error which appears on the face of the record, will not be disturbed unless positive and substantial evidence is adduced to show that the land is suitable for such development.

Small tract applications for land which is rough and mountainous and desired for recreational use are properly rejected.

R. G. Dinneen et al., Sacramento 053308, etc. (July 16, 1959)

LO

In reply refer to:
Sacramento 053308 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 16, 1959

Certified Mail
Return Receipt Requested

DECISION

R. G. Dinneen et al. : Small Tract Applications

Decision of the Manager Affirmed

R. G. Dinneen and four other persons 1/ have appealed from a decision of the Manager which rejected their small tract applications, with others, 2/ for the reason that the land had been classified as not suitable for small tract development.

The lands are located in Tulare County, California, along the North Fork of the Kaweah River. The report of field examination discloses that (1) the rough and mountainous topography of the lands is far too rugged to permit the construction of homesites at a reasonable cost; (2) the area is valuable for recreational purposes and the issuance, of small tract patents or leases for lands along the river would tend to restrict the use of the area by the general public; (3) the construction of human habitations along the river would be extremely hazardous because of the periodic floods prevalent in the drainage area; and (4) power and other utilities are not readily available.

The question in issue is one of proper classification and the appellants have submitted no positive and substantial evidence that the classification of the land as not suitable for small tract development is erroneous. Mere statements by the appellants that the facts are not as reported in the field examination are not sufficient to rebut the findings embodied in a report of field examination. Whenever the Bureau classifies land as unsuitable for the purpose for which the application was made, the burden is placed on the applicant to show in what manner the Bureau's adverse classification was erroneous, and the classification will not be disturbed unless there is a showing of substantial error. Warren H. Goss et al., A-27418 (March 18, 1957).

1/ The names of the other appellants and the serial number of their applications are as follows:
Mrs. Alice J. Dofflemyer, Sacramento 053318 ✓
Mrs. Caroline D. Forkel, Sacramento 053342 ✓
Mrs. Caroline E. Dinneen, Sacramento 053343 ✓
Mr. Ralph A. Bostedt, Sacramento 053554

2/ The decision of the Manager rejected 22 small tract applications for land in secs. 2 and 13, T. 16 S., R. 28 E., M.D.M., California.

The Department has held that small tract applications are properly rejected where the land applied for is steep, 3/ inaccessible, 4/ and the land is valuable for recreational purposes.5/ Furthermore, it is the express policy of the Department to make public lands valuable or prospectively valuable for public recreation purposes available for use by the general public. See Policy Statement, approved by the Secretary of the Interior on April 16, 1958. Cf. Burton C. Corwin et al., Sacramento 053371 etc. (March 12, 1959).

The decision of the Manager is affirmed.

Mr. Dinneen et al. are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Earl J Thomas

Acting Director

Enclosure

DISTRIBUTION:
Gilmore and Gilmore, Attorneys for the Appellants (Certified Mail)
Each appellant (Regular Mail
Hon. Harlam Hagen, Member of Congress
Lands Staff Officer
Appeals List No. 1
ALR

3/ Harry Carson et al., A-27289 (May 28, 1956).

4/ Eugene Robson, A-27334 (July 13, 1956).

5/ Lawrence E. Lowry et al., A-27835 (March 2, 1959).

L(Sac)

SMALL TRACTS * 2 Applications
* 3 Classification
PUBLIC SALE * 2 Application

Small tract applications are properly rejected where the land is topographically unsuitable for small tract development and it has been classified as suitable for disposal by public sale.

Lonnie Guy Neal et al., Los Angeles 0129061 etc.
(July 20, 1959)

In reply refer to:
Los Angeles 0129061
0129062
0129063
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 20, 1959

Certified Mail
Return Receipt Requested

DECISION

Lonnie Guy Neal :
James F. Eggers : Small Tract Applications
Nevada V. Eggers :

Decision of the Chief, Land Adjudication Unit, Affirmed

The above-named parties have appealed from a decision of the Chief, Land Adjudication Unit, which rejected their small tract applications for certain lands in sec. 6, T. 5 N., R. 3 W., S.B.M., California. The applications were rejected because the tracts are topographically unsuitable for small tracts. The tracts, and other lands, were classified as suitable for disposal by public sale pursuant to application, Los Angeles 0130968, of Grace C. Jackson. The public sale application is for lots 8 to 11 inclusive, sec. 6, embracing 23.14 acres. The land applied for by the small tract applicants is in lots 8, 9, 10, sec. 6.

The appellants's filed a joint appeal. They contend that the land is suitable for small tracts for the reason that the tracts are adjoining to, and contiguous with, other small tracts which have been allowed and are also in the immediate vicinity of subdivisions and residential lots.

The report of field examination discloses that the lands are located adjacent to an area of intensive small tract and private subdivision development, and of the 23.14 acres comprising the tract, approximately two acres are level to sloping, building site lands. The remainder of the tract, where the lands applied for by the small tract applicants are located, is made up of rocky, rough, rolling hills, difficult of development for homesites, and therefore, not suitable for small tract purposes. It appears that the public interest will best be served by classification of the whole tract (23.14 acres) as suitable for disposal by public sale.

The question in issue is one of proper classification and the appellants have submitted no positive and substantial evidence that the classification of the land as not suitable for small tract development is erroneous. Whenever the Bureau classifies land as unsuitable for the purpose for which the application was made, the burden is placed on the applicant to show in what manner the Bureau's adverse classification was erroneous, and the classification will not be disturbed unless there is a showing of substantial error. Warren H. Goss et al., A-27418 (March 18, 1957).

The appellants' statement of reasons for their appeal has been carefully considered. It provides no basis for changing the classification of the land. The Department has stated that small tract applications for land which is topographically unsuited for small tract disposal are properly rejected. Ruth Gary, A-27789 (January 12, 1959). Therefore, the appellants' applications were properly rejected.

Accordingly, the decision of the Chief, Lands Adjudication Unit, is affirmed.

Messrs. Neal and Eggers and Mrs. Eggers are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is filed, then the adverse party to be served is:

Mrs. Grace C. Jackson
2755 Baltic Avenue
Long Beach 10, California

For the Director

John B

Enclosure

DISTRIBUTION:

Mr. Lonnie G. Neal (Certified Mail)
Mr. James F. Eggers (Certified Mail)
Mrs. Nevada V. Eggers (Certified Mail)
Mrs. Grace C. Jackson (Regular Mail)
Lands Staff Officer
Appeals List No. 1
AIR

57714-59

LQ Sac

SMALL TRACTS * 3 Classification

PUBLIC SALES * 3 Classification

RULES OF PRACTICE * 9 Service on Adverse Parties

An 80-acre tract of public land surrounded on three sides by privately owned land of a public sale applicant and inaccessible on the other because of altitude, which can be disposed of as one isolated tract or a number of small tracts, is properly classified as suitable for disposal at public auction in a single tract because of the lack of public access.

An affidavit which merely certified that a copy of the notice of appeal, properly addressed and with sufficient postage was placed in the mail, is not adequate proof of service on an adverse party.

Henry Willett Patrick et al., Los Angeles 0148950 (July 27, 1959)

In reply refer to:

Los Angeles 0148950, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

July 27, 1959

Certified Mail
Return Receipt Requested

DECISION

Henry Willett Patrick et al. : Small Tract

Decision of the Manager Affirmed

Mr. Henry Willett Patrick and five others 1/ have appealed from a decision of the Manager of the Los Angeles, California, Land Office, dated July 31, 1957, which rejected their small tract applications, as well as those of 26 others, for land described as the W½SE¼, sec. 13, T. 6 N., R. 13 W., S.B.M., California. The Manager's decision classified the land as an isolated tract and declared it unsuitable for small tract purposes for lack of public access. This same decision allowed the public sale application of Albert F. Bolz, Los Angeles 0129814, filed March 11, 1955, for the land described above.

Fifteen of the 32 small tract applicants presented appeals in another action, final disposition of which was made in a departmental decision previous to consideration of this appeal. The facts of that case are exactly those of the present one. The Department held that the above-mentioned 80-acre tract of public land surrounded on three sides by privately-owned land of the public sale applicant and inaccessible on the other side because of altitude, which could be disposed of as one isolated tract or a number of small tracts, was properly classified as suitable for disposal at public auction in a single tract because of the lack of public access. Albert F. Bolz, Lionel John Benner et al., A-27804 (February 3, 1959).

1/ The names of the other appellants and the serial number of their applications are as follows:

Earnest Bartett McCormack	Los Angeles 0149806
Mike Erion McCormack	Los Angeles 0149807
Hugh Everett McCormack	Los Angeles 0149808
William Dale Porter	Los Angeles 0149977
John Henry Miller	Los Angeles 0149978

A careful study of the grounds for appeal submitted by the appellants in this action does not disclose any issues which distinguish it from the cases previously adjudicated. Therefore, the decision of the Manager is affirmed.

This case is also subject to dismissal on procedural grounds as adequate proof of service on the adverse party has not been furnished. The affidavit submitted by the appellants, which merely certifies that copies of the notice of appeal were properly addressed, covered with proper postage, and placed in the mail, is not sufficient proof of service. 43 CFR, 1958 Supp., 221.95(a) and (b).

Each applicant is allowed the right of appeal to the Secretary of the Interior in accordance with 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is taken, the adverse party to be served is:

Mr. Albert F. Bolz
4836 W. Avenue "Q"
Quartz Hill Route #3
Lancaster, California

For the Director:
John B. Piccolo

Enclosure

DISTRIBUTION:

Mr. Henry Willett Patrick (Certified Mail)
Mr. Earnest Bertett McCormack (Certified Mail)
Mr. Mike Erion McCormack (Certified Mail)
Mr. Hugh Everett McCormack (Certified Mail)
Mr. William Dale Porter (Certified Mail)
Mr. John Henry Miller (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

57714-59

ADJUDICATION * 1 Generally
SMALL TRACTS * 1 Generally
* 3 Classification

Where a small tract offer is rejected on the grounds that the land involved is embraced by a mining claim and the record is not clear as to the location and validity of the claim, the case will be remanded for further appropriate consideration.

In the circumstances, a determination first should be made as to whether the land is suitable for small tract development purposes, apart from the question of any mining claims that may be involved. If the land is determined to be suitable for such development, then further consideration should be given to any mining claims or mineral values involved.

Mary E. Letts, Los Angeles 0133432 (August 12, 1959)

RO

In reply refer to:

Los Angeles 0133432
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

August 12, 1959

DECISION

Mary E. Letts : Small Tract Application
:
:

Case Remanded

Mary E. Letts has appealed from a decision of the Manager which rejected her small tract application for the stated reason that the land is mineral in character and should not be sold as small tracts.

The land classification report in the record of the Mining Valuation Engineer who examined the land indicates that the land is mineral in character and is embraced by mining claims. However, the examination appears to have been made primarily for the purpose of determining the mineral character of certain tracts under small tract application located in the NE¼SE¼ Sec. 18, T. 5 S., R. 2 W., S.B.M., rather than the NW¼SE¼ of the same section where the small tract application involved in the present appeal is located. Therefore, the record is not specific as to the location of any mining claims or mineral values that may be involved.

In the circumstances, it would be appropriate for the Manager to first determine whether the land is physically suitable for small tract development apart from the question of any mining claims or mineral values that may be involved. If the lands should be determined not to be suitable for small tract development, apart from the question of the mining claims or mineral values, then the small tract offer should be rejected. Cf. J. W. Allen et al., v. E. A. Mohler et al., A-26931 (November 5, 1954).

On the other hand, if it is determined by reexamination that the land is valuable for small tract development, then consideration should be given to any mining claims or mineral values that may be involved. If it is determined upon reexamination that the land is embraced in a valid mining claim; or is primarily valuable for its mineral the mining of which would be incompatible with the small tract use, * then the small tract offer should be rejected.

---

* Cf. Myrtle B. Muntean, A-25646 (June 28, 1949).

However, if it appears upon reexamination that the land embraces mining claims of questionable validity, then facts should be developed to determine whether or not it would be in the public interest at this time for the government to initiate action and to assume the burden required through appropriate proceedings to eliminate the mineral conflicts. The small tract applicant is at liberty to submit any evidence he desires bearing on the non-mineral character of the land.

If it becomes evident that any mineral conflicts involved can be cleared without undue expense to the government and the initiation of adverse action against the claims is otherwise appropriate in the circumstances, then the small tract application should be suspended and appropriate action taken to clear the mineral conflicts and the small tract application should be allowed if all else is regular.

Accordingly, the case is remanded to the Manager, through the Assistant to the State Supervisor at Los Angeles, California for further appropriate consideration as outlined in this decision.

For the Director:

DISTRIBUTION:
Mrs. Mary E. Letts (Regular Mail)
Minerals Staff Officer (5)
Lands Staff Officer (1)
Appeals List No. 1
CFG

SMALL TRACTS * 5 Renewal of Lease

An application for renewal of a small tract lease which has been classified for lease and sale may be approved where a showing is made that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee.

Rudy J. Odone, Los Angeles 0141906 (September 17, 1959)

In reply refer to:

Los Angeles 0141906
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 17, 1959

DECISION

Rudy J. Odone : Small Tract Lease

Decision of the Manager Reversed

Rudy J. Odone has appealed from a decision of the Manager rejecting his application for a second renewal of his small tract lease for the reason that he had not placed additional improvements on the tract during the first year's renewal, and had not satisfactorily explained his failure for not doing so, and that nonrenewal of the lease would work an extreme hardship on him.

The tract was classified for lease and sale and the lease issued July 1, 1956, for a period of one year as a residence. The lease was renewed on July 1, 1957, for one additional year upon the appellant's representation that he had erected a concrete floor slab and rough plumbing on the land. The appellant, in the lease, agreed to construct a house upon the land during the term of the lease. This, he admittedly did not do during the two-year period, and the only improvement on the land is a cement foundation slab with roughed in plumbing.

However, in his appeal the appellant sets forth in detail the circumstances, both as to health and economic conditions, which prevented him from completing the necessary improvements on the tract. He states that he has spent approximately $700.00 on improving the land, and requests a second renewal of the lease for a period of one year so that he may show full compliance with the law and perfect title to the tract.

Although this office would be justified in refusing to renew Mr. Odone's application for second renewal, we are inclined to believe that there are extenuating circumstances in this case, and that his non-compliance with the regulations was due to conditions and circumstances beyond his control, so that leniency is warranted. There appear to be no sufficient reasons to deny Mr. Odone an extension to allow him to prove his good faith by constructing the necessary improvements upon the land. Moreover, it appears that failure to issue a new lease may work an extreme hardship on the appellant. Cf. Henry Offe, 64 I.D. 52 (1957). Although it is not of itself dispositive of an appeal, the asserted expenditure of an applicant in improving the tract is relevant to the question of whether nonrenewal of the lease would work an extreme hardship on the lessee. Amandus James John Jansen, A-27883 (April 21, 1959).

Accordingly, the decision of the Manager is reversed and the case is remanded to the Manager, through the Bureau's State Supervisor at Sacramento, California. In view of the elapsed time, the appellant will be granted a new lease for a period of one year from the date of this decision. The lease shall set forth a sales price which reflects the current market value of the land.

Earl D Thomas

Acting Director

DISTRIBUTION:

Mr. Rudy J. Odone (Regular Mail)
Lands Staff Officer
Appeals List No. 1
ALR

file

SMALL TRACTS * 2 Applications
* 3 Classification

Small tract applications are properly rejected where the land applied for is of such character that it cannot be lotted into suitable tracts without expensive planning, engineering and surveying and is more suitable for retention in public ownership for use for grazing and for public recreational purposes.

When land has been classified as unsuitable for small tract purposes, the classification, in the absence of an error which appears on the face of the record, will not be disturbed unless positive and substantial evidence is adduced to show that the land is suitable for such development.

Spencer R. Wright et al., Sacramento 057462, etc. (September 17, 1959)
(Approved October 2, 1959 by Assistant Secretary of the Interior, Roger Ernst)

In reply refer to:

Sacramento 057462, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

September 17, 1959

DECISION

Spencer R. Wright et al.	:	Small Tract Applications

Decision Affirmed

Mr. Spencer R. Wright and 125 other persons[1] listed in the attached Appendix "A" have appealed from a decision of the Manager dated June 2, 1959, rejecting their small tract applications filed pursuant to the act of June 1, 1938 (43 U.S.C., 1952 ed., Supp. V, sec. 682a et seq.) for certain tracts of lands in sections 13 and 24, T. 27 S., R. 32 E., M.D.M., and section 35, T. 26 S., R. 32 E., M.D.M., in Kern County, California, for the reason the lands are unsuitable for small tract development.

The lands are located in the vicinity of Lake Isabella Reservoir, near the town of Bodfish and the old mining community of Keyesville, California. The reports of field examinations made in connection with the lands in each area disclose that (1) the topography of the lands ranges from rolling to steep and is too rough to be suitable for small tract development; (2) the lands are covered by a number of unpatented mining claims, and are in an area where considerable mining activity has taken place; (3) while no attempt was made to determine the validity of the numerous claims located on the lands, the segregation of these claims from the proposed small tracts, and the survey of the lands to subdivide the more suitable areas would require difficult and costly cadastral surveys; (4) the construction of roads would be costly, and (5) there is very little prospect of developing water for domestic use in the areas. On the basis of the field reports and in view of the fact that the lands are located in the Mojave Grazing District No. 1, it has been determined that the lands are unsuitable for small tract development, that it is in the public interest to retain them in public ownership for grazing, wildlife and recreation (hunting) purposes.

---

[1] All but appellants in Sacramento 058040, 058042, 058043, and 057747 are represented by Roger G. Duitsman, attorney at law.

The appellants contend in substance that the lands in question are suitable for small tract development, and have submitted with their appeal photographs of the small tract development of another area stated to be in close proximity and of like topography, in support of their contention. The appellants also assert that the mining claims on the lands are not valid, and that development of the area for small tracts will not interfere with the mining or the use of the lands for grazing and wildlife purposes.

It is not necessary in order to dispose of the appellants' small tract applications to determine whether the conflicting mining claims are valid or invalid. The Small Tract Act permits the disposal of land for small tract purposes only where the Secretary has classified the land as chiefly valuable for certain small tract uses. Therefore, even if the mining claims were determined to be invalid, it would still be necessary for the Secretary to classify the land sought by the appellants as suitable for small tract purposes before the applications could be allowed. Consequently, the proper procedure is to determine first whether the land can properly be classified as suitable for small tract development, assuming that the land is otherwise available for disposition under the Small Tract Act. If the land is not suitable for small tract purposes, it is unnecessary to determine whether the mining claims are valid. See J. W. Allen et al. v. E. A. Mohler et al., A-26931 (November 5, 1954).

With respect to the classification of the lands, the Small Tract Act, as previously indicated, vests in the Secretary of the Interior authority, in his discretion, to lease and sell land "chiefly valuable" for the purposes enumerated in that act. Land which is used in the restoration of wildlife and which affords grazing facilities and recreation for many persons cannot be said to be "chiefly valuable" for small tract purposes. Furthermore, much of the land for which the appellants have made application appears to be topographically unsuitable for small tract purposes. For these reasons, the Department has previously rejected numerous small tract applications for lands in approximately the same locality as the lands in question. See Leroy E. Cassou et al., A-27600 (August 26, 1958); William L. Majors et al., A-27730 (January 12, 1959); Ruth Gary, A-27789 (January 12, 1959); Lawrence E. Lowry et al., A-27835 (March 2, 1959); Raymond B. Oliver, A-28016 (August 17, 1959).

The appellants have not shown by positive and substantial evidence that the classification of the land as unsuitable for disposal under the Small Tract Act is in error. Mary Refugio Jackson et al., A-27236, etc. (February 29, 1956).

Accordingly, the decision of the Manager is affirmed.

Acting Director

Approved: October 2, 1959

Assistant Secretary of the Interior

DISTRIBUTION:

Mr. Roger G. Duitsman, Attorney at Law (Regular Mail)
Each applicant listed on Appendix "A" (Regular Mail)
Lands Staff Officer
Appeals List No. 1
RBO

APPENDIX "A"

Name and Address	Serial No. Sacramento
Spencer R. Wright 3230 Empty Saddle Road Rolling Hills Estate, Calif.	057462
Ernest W. Underwood 12806 Stanhill Drive La Mirada, California	057463
Rafael F. Torres 746 West Athens Blvd. Los Angeles 44, California	057464
Herbert W. Teske 20935 Brighton Avenue Torrance, California	057465
Earl A. Teague 5211 Scott Street Torrance, California	057466
Myron H. Spaulding 18518 Spinning Avenue Torrance, California	057467
Fremont Smith 8407 Broadacre Drive Sun Valley, California	057468
Bertha Ritter 1869 Morton Avenue Los Angeles 26, California	057469
Marcus Y. Riley 172 Yucca Street Oxnard, California	057470
Robert E. Peterson 1110 Vescario Drive Glendale 7, California	057471
Wilbur L. Miller 1860 Morton Avenue Los Angeles 26, California	057472

Name and Address	Serial No. Sacramento
Bonner T. Lawler 1606 W. 120th Street Los Angeles 47, California	057473
Herbert W. Knapp 22401 Ocean Avenue Torrance, California	057474
Joe W. Jennings 2237 Rocking Horse Road Rolling Hills Rt. 23 San Pedro, California	057475
Carl W. Hancock 4910 W. 132nd Street Hawthorne, California	057476
Glen W. Hallimore 532 W. Hammel Street Monterey Park, California	057477
David L. Giles 11706 So. New Hampshire Los Angeles, California	057478
Arven L. Gibb 1207 Lillienthal Lane Redondo Beach, California	057479
Edward P. Gebhard 7427 W. 81st Street Los Angeles 45, California	057480
Lillian E. Degen 1617 South Bonnie Brae Street Los Angeles 6, California	057481
Clarence E. Day 16837 Orchard Avenue Gardena, California	057482
Genevieve N. Coury 6462 West Olympic Blvd. Los Angeles 48, California	

Name and Address	Serial No. Sacramento
Howard King 8044 Wilkinson North Hollywood, Calif.	057606
William J. Kendig 601 N. Hale Avenue Fullerton, California	057607
William H. Spears 5029 W. 137th Place Hawthorne, California	057608
James T. Welsh 234 Ney Street Playa Del Rey, California	057609
Myrl M. Riggins 3028 via Corona Montebello, California	057610
Doris B. Russell 1341 - 11th Street Manhattan Beach, California	057611
Calvin V. Gantz 11522 Jacalene Lane Garden Grove, California	057612
William E. Denning 5347 Bindewald Torrance, California	057613
Bessie W. Drummond 3853 - 41st Street San Diego, California	057614
Marion M. Drummond 1915 - 4th Avenue San Diego, California	057615
Robert M. Drummond 3853 - 41st Street San Diego, California	057616

Name and Address	Serial No. Sacramento
Lawrence W. Schoffner 1848 Hope Street So. Pasadena, California	057617
Alfred E. King 5145 Village Green Los Angeles 16, California	057618
Ralph M. Allen 644 Canobie Avenue Whittier, California	057488
Frank Allopenna 10721 North Gate Street Culver City, California	057489
Francis J. Amato 8853 Halldale Street Los Angeles 47, California	057490
Kenneth R. Amundsen 7034 Passaic Huntington Park, California	057491
Bob N. Arnett 16809 Merit Gardena, California	057492
Malcolm E. Arnold 1606 West 120th Street Los Angeles 47, California	057493
Jon D. Arnett 8723 South Wilton Place Los Angeles 47, California	057494
Ike D. Baker 9332 E. Flower Street Bellflower, California	057495
Milford R. Baumgardner 1345 Jefferson Avenue Hawthorne, California	057496

Name and Address	Serial No. Sacramento
Adams W. Bolton 1498 W. 153rd Street Gardena, California	057497
John James Brown 1117 E. 83rd Street Los Angeles 1, California	057498
Thomas James Brown 1117 E. 83rd Street Los Angeles 1, California	057499
Donald E. Burroughs P. O. Box 34 Fillmore, California	057500
Gust Carlos 2123 West 74th Street Los Angeles 47, California	057501
Edward G. Castro 4208 South Norton Los Angeles 8, California	057502
Jerry Cimino 408 North Palos Verdes Street San Pedro, California	057503
Bertha J. Cooley 16705 So. Prairie Avenue Lawndale, California	057504
Ervin R. Cooley 16705 So. Prairie Avenue Lawndale, California	057505
Robert E. Condon 1416 Angeles Avenue Los Angeles 26, California	057506
Phillip Lang Crosby Suite 101 430 North Rodeo Drive Beverly Hills, California	057507

Name and Address	Serial No. Sacramento
Robert L. Degen 1617 So. Bonnie Brae Street Los Angeles 6, California	057508
Claud B. Derden 8401 Broadacre Drive Sun Valley, California	057509
Donald D. Diem 4535 Dunrobin Lakewood 8, California	057510
Jack K. Diem 1636 West 266th Street Harbor City, California	057511
Ned F. Dowling 1510 W. 79th Street Los Angeles 47, California	057512
Paul F. Dombroski 5005 South La Brea Los Angeles 46, California	057513
James E. Enochs 2058 Cullivan Street Los Angeles 47, California	057515
Peter G. Fettis 14681 Novice Van Nuys, California	057516
James R. Finley 8331 Petaluma Drive Sun Valley, California	057517
Frank A. Fuller 7813 Beverly Boulevard Los Angeles 36, California	057518
Jack D. Gracye 1047 So. Wiseburn Avenue Hawthorne, California	057519

Name and Address	Serial No. Sacramento
Charles I. Haaker 1606 W. 120th Street Los Angeles, California	057520
Bernard G. Harrison 2317½ Crest Drive Manhattan Beach, California	057521
Ann P. Hart 206½ South Poinsetta Place Los Angeles 36, California	057522
Norma H. Heizer 5011 Ambrose Avenue Los Angeles 27, California	057523
Barney Henzeloff 1038 S. Orange Drive Los Angeles 19, California	057524
Rex A. Hobart 11521 Jacalene Garden Grove, California	057525
Glen D. Holtzman 5005 South La Brea Los Angeles, California	057526
Stella M. Hutchins 9026 - 2nd Avenue Inglewood 4, California	057527
Dorothy G. Ingrao 4835 Camellia Avenue Temple City, California	057528
John Ingrao 4835 Camellia Avenue Temple City, California	057529
Charles Kahn 3600¼ West 60th Street Los Angeles 43, California	057530

Name and Address	Serial No. Sacramento
Robert L. Lamour 1047 South Wishburn Avenue Hawthorne, California	057531
James L. Lawler 3706 Elmwood Court Riverside, California	057532
Edward J. Libra 10705 S. Western Avenue Los Angeles, California	057533
Clifford L. Livingston 720 South Vail Avenue Montebello, California	057534
William S. Lockwood 819 Franklin Avenue Santa Monica, California	057535
Dominic P. Lombardo 3255 E. Arlington Street Compton, California	057536
Leonard L. Lombardo 1208 Golden Avenue Compton, California	057537
Edward F. Marquis 3817 Gibraltar Avenue Los Angeles, California	057538
Everett E. McDonald 15231 Rosella Avenue Lawndale, California	057539
Francis L. Meyer 2918 Sanborn Avenue Venice, California	057540
Charles M. Murchison 10759 Jefferson Boulevard Culver City, California	057541

Name and Address	Serial No. Sacramento
John R. Myers 13817 Catalina Avenue Gardena, California	057542
Natalie H. Nacey 6462 West Olympic Boulevard Los Angeles 48, California	057543
Jack Nielson, Jr. 11401 South San Pedro Street Los Angeles 61, California	057544
Frederic C. Pahl 1500 Walnut Avenue Manhattan Beach, California	057545
John R. Pena 1914 W. 84th Street Los Angeles 47, California	057546
Glen W. Pierce 1729 W. 121st Street Los Angeles, California	057547
Robert Pimentel 18824 Prairie Avenue Torrance, California	057548
Kenneth M. Reed 6921 Benson Street Huntington Park, California	057549
Frank Refalo 2505 West 168th Street Torrance, California	057550
Joseph Refalo 1659 Ocean Front Santa Monica, California	057551
Kenneth A. Ross, Jr. 3500 W. 83rd Street Inglewood, California	057552

Name and Address	Serial No. Sacramento
Norman A. Schwendler 1553 W. 127th Street Los Angeles 47, California	057553
Elsie Seebach 9702 Ocean Gate Inglewood, California	057554
Ernie A. Serfas 9146 South Van Ness Avenue Los Angeles 47, California	057555
Lawrence J. Sharp 9431 South Harvard Boulevard Los Angeles 47, California	057556
George R. Strugar 547 H Street Renton, Washington	057557
Lucille Valek 13816 Catalina Street Gardena, California	057558
Louis R. Valenti 3124 W. 177th Street Torrance, California	057559
Emil L. Vukasovic 7014 Passaic Huntington Park, California	057560
Fred M. Ward 15503 Cimarron Gardena, California	057561
Charles P. Webster 1711 Ford Avenue Redondo Beach, California	057562
Emery D. Wiltse 15626 Ermanita Avenue Gardena, California	057563

Name and Address	Serial No. Sacramento
George J. Zaengle RD #1 Herkimer, New York	057564
John P. Zouras 11619 South Haas Avenue Los Angeles 47, California	057565
Wilfred C. Smith 1600 West 135th Street Gardena, California	057619
Oman B. Brashears 737 W. 148th Street Gardena, California	057620
John J. Comensky 857 Aubrey Park Hermosa Beach, California	057621
Richard B. Sabey 20939 Brighton Avenue Torrance, California	057622
Walter E. Moeller 426 S. Essey Avenue Compton, California	057623
Bertram A. Anctil 1012 West 220th Street Torrance, California	057624
Revel D. Callahan 15010 South Harvard Boulevard Gardena, California	057625
Earl H. Kelly 3118 W. 78th Street Los Angeles 43, California	057626
Andrew J. Lococo 4334 W. Imperial Highway Hawthorne, California	057627

Name and Address	Serial No. Sacramento
John A. Pantalone 6240 So. Corning Avenue Los Angeles 56, California	057628
Abraham Dickstein 1943 No. Carmen Hollywood, California	058040
Esther Dickstein 1943 No. Carmen Hollywood, California	058042
Lena Rubin 168 So. Craig Pasadena, California	058043
Edward Portukalin P. O. Box 627 Lake Isabella, California	057747

PUBLIC LANDS * 7 Withdrawals

PUBLIC SALE * 2 Applications

SMALL TRACTS * 2 Applications

Public lands withdrawn from all forms of appropriation under the public land laws except for exchange purposes pursuant to a special act, cannot be disposed of pursuant to the Public Sale or Small Tract Laws. Pending small tract and public sale applications are defeated by the withdrawal order.

James A. Kelleher et al., BLM 039996, (Florida), etc. (October 5, 1959)

In reply refer to:
BLM 039996 (Florida)
043854
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 5, 1959

Certified Mail
Return Receipt Requested

DECISION

James A. Kelleher : Small Tract
Robert H. Eaker : Public Sale

Decisions of Chief, Lands Adjudication Section, Affirmed

Joseph A. Kelleher has appealed from the decision of the Chief, Lands Adjudication Section, Eastern States Land Office, dated November 4, 1958, rejecting his small tract application for the stated reasons that the Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, had filed an application for the temporary withdrawl of the land in his small tract application from all forms of appropriation under public land laws and because the land had previously been classified for public sale disposal.

Robert H. Eaker has appealed from the decision of the Chief, Lands Adjudication Section, dated November 5, 1958, rejecting his public sale application for the stated reason that the land in his public sale application also had been embraced in the above-mentioned temporary withdrawal application filed by the Sport Fisheries and Wildlife Bureau.

Public Land Order 1802, 24 F.R. 1464 (February 27, 1959) withdrew the subject lands, and other land, from all forms of appropriation under the public land laws except for exchange purposes pursuant to the provisions of the Act of August 22, 1957 (71 Stat. 412) in connection with the National Key Deer Refuge.

Public lands so withdrawn cannot be disposed of pursuant to the Small Tract or Public Sale Laws. Cf. Earl L. Livermore, A-27522 (February 7, 1958). An applicant under either the small tract or public sale law obtains no right to the land by merely filing his application, so the pending applications are defeated by the withdrawal order. Cf. Charles B. Abbott, A-25802 (June 9, 1950).

Accordingly, for the reason stated, the decisions of the Chief, Lands Adjudication Section, are both affirmed.

Messrs. Kelleher and Eaker are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal, there must be strict compliance with the regulations.

If an appeal is taken by either appellant, then the adverse party to be served is the Director, Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior, Washington 25, D. C.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. William C. Cramer, House of Representatives (Regular Mail)
Mr. Joseph A. Kelleher (Certified Mail)
Mr. Robert H. Eaker (Certified Mail)
Director, Bureau of Sport Fisheries and Wildlife (Regular Mail)
Lands Staff Officer
Appeals List No. 1
JHO'D

62479-59

SMALL TRACT * 5 Renewal of Leases

An application for a second renewal of a small tract lease is properly rejected where the lessee fails to construct improvements on the land during the first renewal and the only improvement on the land is a 20' x 20' cement foundation slab placed there during the term of the original lease.

Howard Benedict White Jr., Los Angeles 099312 (September 18, 1959)

In reply refer to:

Los Angeles 099312
5.04g
September 18, 1959

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

Certified Mail
Return Receipt Requested

DECISION

Howard Benedict White Jr. : Small Tract

Decision of the Manager Affirmed

Mr. Howard Benedict White Jr. has appealed from a decision of the Manager of the Los Angeles, California, Land Office, dated August 11, 1958, rejecting an application for a second renewal of a small tract lease for the reason that no new improvements had been made since the first renewal was allowed.

The original lease was issued for a term of three years on July 27, 1954, under the terms of the Small Tract Act of June 1, 1938 as amended (43 USC 682a). On May 24, 1957, the applicant filed for a renewal of the lease, alleging as an improvement a 20' x 20' cement foundation slab installed at a cost of $280. Subsequently, a renewal in the form of a new lease for 1 year was granted on July 27, 1957. On appeal, the applicant states that his unemployment and the illness of his wife prevented him from complying with the terms of the lease. He now asserts that he is prepared to complete the cabin for which the lease was obtained.

Where an application for the renewal of a small tract application is timely filed, but the required improvements have not been erected a renewal may be allowed where the failure to erect improvements is justified, and the applicant shows that nonrenewal would work an extreme hardship. Henry Offe, 64 I.D. 52 (1957). However, it has been consistently held that the pouring of a cement foundation slab is not a sufficient basis for renewal of a small tract lease. Lewis E. Levitan, Los Angeles 0112233 (April 15, 1959). It is also held that a lack of finances does not justify a failure to construct the required improvements on the land. A. John Davis, Juneau 010179 (October 17, 1958). There was ample time during the four year period covered by the two leases for the appellant to construct the required improvements and his reasons for not doing so cannot be held to justify noncompliance. Moreover, the appellant has neither shown nor alleged that nonrenewal would work an extreme hardship on him. The relatively small investment which has been made thus far in the land, together with the fact that the appellant is not barred from applying for or otherwise obtaining another small tract, allows the conclusion that extreme hardship will not result from the refusal to renew the lease for a second time.

The decision of the Manager is, accordingly, affirmed.

If the land is disposed of, the person acquiring the land will be required to reimburse the appellant for the fair value of his improvements, if such improvements are of value to the person acquiring the land.

Mr. White is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director

A. H.

Enclosure

DISTRIBUTION:

Mr. Howard Benedict White Jr. (Certified Mail)
Lands Staff Officer (3)
Appeals List No. 1
LLM

60867-59

SMALL TRACT * 5 Renewal of Lease

A small tract lease for land which is classified for lease only will not be renewed if improvements have not been constructed thereon during the term of the original lease.

Ernest O. Fulgham et al., Sacramento 047577 etc. (October 19, 1959)

✓ D

during the terms of their leases, their applications for renewal were properly denied. Where, as here, a lessee loses a right granted to him by his lease through his own fault, that is by failing to comply with the conditions under which the lease was granted, the consequences must be borne by the lessee. Cf. Jimmie Deones, A-27539 (February 11, 1958).

Accordingly, the decision of the Manager is affirmed.

The appellants are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. Clair Engle, United States Senate
Mr. Ernest O. Fulgham (Certified Mail)
Mr. Asher D. Kantz (Certified Mail)
Mr. Richard K. Smart (Certified Mail)
Mr. Lowell W. Ashbaugh (Certified Mail)
Lands Staff Officer
Appeals List No. 1
LLM

In reply refer to:

Sacramento 047577 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of LandManagement
Washington 25, D. C.

October 19, 1959

Certified Mail
Return Receipt Requested

DECISION

Ernest O. Fulgham *et al.* : Small Tract

Decision of the Manager Affirmed

Ernest O. Fulgham and three others [1] have appealed from a decision of the Manager of the Sacramento, California, Land Office, dated April 29, 1959, which rejected their applications for renewal of their small tract leases for the reason that no improvements were placed on the respective tracts during the terms of the original leases.

The tracts in question were classified for lease only by Small Tract Classification Order Number 466, dated January 4, 1956. This order reads in part as follows:

> "4. To maintain their rights under the leases, lessees will be required to construct substantial improvements on the lands. Failure to do so will result in nonrenewal of the lease. * * *."

The applicants have admittedly refused to construct the required improvements on the land. They assert that it would have been "imprudent" to do so without an assurance that they would ultimately receive patents to the land embraced in their respective applications. However, the results of a failure to comply with the terms of the classification order and their leases are clear and consonant with the corresponding regulation, 43 CFR, 1958 Supp., 257.15(b). Cf. Marvin M. Liblick, A-26324 (February 11, 1952). Since the applicants constructed no improvements on their tracts

---

[1] The names of the other appellants are: Asher D. Kantz, Sacramento 048538, Richard K. Smart, Sacramento 048542 and Lowell W. Ashbaugh, Sacramento 048543.

SMALL TRACTS * 1 Generally
* 2 Applications

Land upon which a valid mining claim has been located may not be classified for disposal under the Small Tract Act.

Applications under the Small Tract Act for land included in a valid mining claim may not be allowed.

Sam Trettenero et al., Sacramento 052983 etc. (October 29, 1959)

In reply refer to:

Sacramento 052983
053007
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

October 29, 1959

Certified Mail
Return Receipt Requested

DECISION

Sam Trettenero
Emit R. Beavers

Small Tract

Manager's Decision Affirmed

Sam Trettenero and Emit R. Beavers have appealed from a decision of the Manager, dated July 18, 1957, which rejected their small tract applications for land on which a mining claim exists. When the applications were filed the land was classified for small tracts, but while the applications were pending the small tract classification order was revoked upon the Bureau's being apprised of the existence of the mining claim, which, in the opinion of a Bureau mining engineer, is based upon a valid discovery. The claim was located before the land had been classified for small tract disposal. The appellants assert that their own inspections of the land do not disclose the existence of a mining claim, nor reveal the mineral character of the land.

The actions of the Manager were proper. There was nothing binding about the classification of land as suitable for disposal as small tracts. It was subject to revocation at any time or to revision upon a showing of changed conditions, additional facts, or other factors indicating error in the classification. State Applications to Exchange Lands Under Section 8 of the Taylor Grazing Act, 61 I.D. 270, 278 (1954). Land upon which a mining claim has been located may not properly be classified for disposition under the Small Tract Act. The locator of the claim has acquired, under the mining laws, at least the right of possession against all except the Government, and he may have acquired the entire equitable title to the land, if he has satisfied the requirements of the mining laws with respect to discovery. The Dredge Corporation, 64 I.D. 368, 375 (1957). In the instant case, a claim has been recorded in the Shasta County Courthouse, and the claim appears, upon inspection by a qualified Bureau employee, to be valid. Applications under the Small Tract Act for land included in this mining claim, therefore, may not be allowed. Cf. *J.W. Allen et al.*, v. *E. A. Mohler et al.*, A-26931 (November 5, 1954)

The Manager's decision is affirmed.

Messrs. Trettenero and Beavers are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If appeals are taken, then the adverse parties to be served are:

Mr. Millard F. Davis, Shasta, California

Mr. Ray F. Heffelfinger, Shasta, California

Edward Woozley
Director

Attachment

DISTRIBUTION

Sam Trettenero (Certified Mail)
Emit R. Beavers (Certified Mail)
Lands Staff Officer
Appeals List No. 1
EVJ

SMALL TRACT * 2 Application

Where a tract of land is covered by more than one small tract application and the land is subsequently classified for disposal under the Small Tract Act the first small tract application properly filed will be allowed and all later filings will be rejected.

LeRoy M. Walker et al., Los Angeles 0114828, etc. (November 2, 1959)

In reply refer to:

Los Angeles 0114828
0127261
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 2, 1959

DECISION

Certified Mail
Return Receipt Requested

LeRoy Malcolm Walker :

David Edward Harris :

Small Tract Applications

Decisions of Manager Affirmed

LeRoy Malcolm Walker and David Edward Harris have appealed from decisions of the Manager, which rejected their applications for the stated reasons that the lands were covered by prior filed small tract applications which have now been allowed.

The record shows that LeRoy Malcolm Walker filed small tract application, Los Angeles 0114828 on May 17, 1954, and that the land was embraced by a prior application, Los Angeles 0115519, which was filed May 14, 1954. The record also shows that the small tract application of David Edward Harris, Los Angeles 0127261, was filed February 15, 1955, and that the land in that case was embraced by small tract application, Los Angeles 0127123 filed February 14, 1955. The record shows further that the lands were classified as suitable for disposal under the provisions of the Small Tract Act and that small tract leases were issued pursuant to the prior conflicting applications effective May 1, 1959.

The long established rule provides that the first application filed for the purposes for which the lands are classified obtains priority of filing and that the application will be allowed if all else is regular. Minta Harper Dozier, A-27221 (November 17, 1955).

The allegation of David Edward Harris that he attempted to furnish certain information concerning his qualification as an applicant in 1957 at a time when the Land Office was closed, is not pertinent as the issue involves the question of priorities established in 1954.

Therefore, the decision of the Manager was correct and is hereby affirmed.

LeRoy Malcolm Walker and David Edward Harris are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

If an appeal is filed by LeRoy Malcolm Walker, the adverse party to be served is Mr. Edward Wallace Pike, 9388 Dorrington Place, Pacoima, California.

If an appeal is filed by David Edward Harris, the adverse party to be served is Mrs. Grace W. Irvine, 1252 West 83rd Street, Los Angeles 44, California.

For the Director:

Enclosure

DISTRIBUTION:

Mr. LeRoy Malcolm Walker (Certified Mail)
A/GY Sgt. David E. Harris (Certified Mail)
Lands Staff Officer (1)
Appeals List No. 1
CFG

63957-59

appeal to Sec
affirmed A-28308 8-12-60

SMALL TRACT * 1 Generally

A small tract lease will not be amended to embrace other land when the sole reason therefor is that the area of the tract leased is much less than originally shown on the records, where the remaining area embraced by the lease is sufficient in size and suitable in character for the purpose for which the lease was issued.

Joseph C. Potter, Los Angeles 0111407 (November 16, 1959)

In reply refer to:

Los Angeles 0111407
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 16, 1959

Certified Mail
Return Receipt Requested

DECISION

Joseph C. Potter : Small Tract Lease

Decision of the Acting Manager Affirmed

Joseph C. Potter has appealed from a decision of the Acting Manager which amended his lease under the Small Tract Act 1/ because a dependent resurvey covering the SW¼Sec. 19 T. 15 S., R. 8 E., S.B.M., California, plat approved September 15, 1958, reestablished the west line of the section, and determined that the SW¼ Sec. 19 contains considerably less area than indicated by the original survey of the land. 2/

The circumstances here involved are similar to a situation where a small tract lease is altered or canceled because all or some part of the lease covers lands that were patented or withdrawn prior to the time the lease issued. See Bud E. Burnough A-27356 (September 4, 1956). In the present case the small tract lease involves one of thirty two tracts all of which were redesignated and reduced in size to make the tracts conform with the amount of public land available in the SW¼ Sec. 19.

The appellant asserts in substance that he should be allowed to withdraw his present lease and obtain a new lease to lands located in the S½SE¼ Sec. 19.

1/ The Act of June 1, 1938, as amended (43 U.S.C. 682a).

2/ The township was originally surveyed in 1857 and subsequent dates, plat approved September 20, 1880. A supplemental plat approved October 21, 1957 redesignated a total of 32 lots, each containing five acres in the SW¼ Sec. 19 to accommodate Small Tract Classification Order No. 519, California, 22 F.R. 741, January 29, 1947. Under the new plat the land covered by the present lease is described as lot 76 with an area of 1.13 acres, a width of 77.88 feet and a depth of approximately 660 feet.

In the case of Viola P. Dreyfus, A-26598 (May 5, 1953) the Department stated in applicable part that an amendment may be granted on equitable grounds to correct mistakes and to prevent unmerited hardship where it has been shown that through no fault or neglect on the part of the entryman the land embraced in an entry is so unfit for occupancy as to make it practically impossible to meet the requirements of law and that an amendment to substitute other land may be allowed.

However, the record in the present case shows that lot 76 is 1.18 chains or 77.88 feet in width. This width exclusive of the 33 foot right-of-way reservation along the west boundary of the tract is 44.88 feet. There is also a 33 foot right-of-way reservation along the south boundary of the tract and the appellant asserts that the north 250 feet of lot 76 lies within Carrizo Wash and is unfit for building purposes. Accordingly, the remaining usable length of lot 76 exclusive of the area occupied by the right-of-way and Carrizo Wash is about 377 feet. Thus, it appears from the record that there is a usable area remaining suitable for building purposes of about 44.88 by 377 feet which would be adequate for the construction of appropriate improvements and for use of the land for residential and recreational purposes.

The appellant may, of course, relinquish his present lease covering Lot 76 in which case he would be at liberty to file application for other lands. However, the relinquishment and the new application would give him no rights to the land involved in the new application as the land must first be classified as suitable for disposal under the Small Tract Act before a small tract application can be properly allowed. Moreover, such application would be subject to all valid existing rights and prior small tract applications covering the same land, if any. Accordingly, Mr. Potter could be given no assurance that a new lease or offer to purchase would be granted if he relinquished the lease he now holds to Lot 76 and filed a new application for other lands.

Therefore, the decision of the Acting Manager is affirmed.

Joseph C. Potter is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

For the Director:

Enclosure

DISTRIBUTION:
Mr. Joseph C. Potter (Certified Mail)
Appeals List No. 1
Land Staff Officer (1)
CFG

In reply refer to:

Sacramento 058677, etc.
5.04g

DEPT. OF INTERIOR
SACRAMENTO, CAL.
DEC 15 10 37 AM 1959
BUREAU OF
LAND MANAGEMENT
LAND OFFICE.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

November 30, 1959

DECISION

Anthony F. Palopoli et al. 1/ :

Withdrawal of Appeals
Filed: November 5, 1959

Small Tract Applications

Appeals Dismissed

In view of the withdrawals filed by Anthony F. Palopoli and other small tract applicants as listed in Appendix A, the appeals to the Director, Bureau of Land Management, in this matter are dismissed. The cases are returned with a copy of this decision to our State Supervisor for further appropriate action regarding the return of the advance rentals.

For the Director:

1/ Withdrawals filed by the nine appellants listed in Appendix "A"

DISTRIBUTION:
Each appellant listed in Appendix "A" (Regular Mail)
SO(California)
LO(Sacramento) ✓
Each Case File
EHS

APPENDIX "A"

Name	Serial No. (Sacra.)
Anthony F. Palopoli	058677
Opal L. Mobley	058678
Virginia K. Hendren	058682
Almeda Rosemary Keegan	058683
Beverly J. Hughes	058684
Della Mae Wasson	058744
Henry W. Wasson	058745
Frank W. Colgain	058748
Florence L. Stumpf	058750

SMALL TRACTS * 2 Applications
* 3 Classification

Where lands embraced in a small tract application are subsequently included within an application for withdrawal and reservation filed by the Fish and Wildlife Service, further action on the small tract applications should be suspended until final action is taken on the withdrawal application.

Small tract applications rejected on grounds of adverse classification will be remanded where the records do not provide a sufficient basis for an informed determination as to the proper classification of the land.

William F. Gary et al., Sacramento 043340, etc. (December 2, 1959)

In reply refer to:

Sacramento 043340, etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 2, 1959

Certified Mail
Return Receipt Requested

DECISION

William F. Gary et al. : Small Tracts

Decisions of the Manager Reversed

Mr. William F. Gary and three others 1/ have appealed from decisions of the Manager rejecting their small tract applications for certain lands in sections 25 and 26, T. 11 N., R. 5 W., M.D.M., because the lands are required for retention in Federal ownership for public recreation purposes and because allowance of the applications would interfere with the management of the remaining area and would place a costly administrative burden upon the county. An additional basis for rejecting two of the applications was that the lands described therein are included in a withdrawal application filed by the Fish and Wildlife Service.

The appellants allege that the classification is not correct and contend that they are entitled to the land because their applications were

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1/ The names of the remaining appellants are:

Homer C. Brown	Sacramento 043341
Harold J. Brown	" 043343
Joseph W. White, Jr.	" 059787

Mr. Curtis Brown, Sacramento 043342, one of four original applicants, died in March, 1958. With the consent and cooperation of Mr. Curtis Brown's heirs, Mr. Joseph W. White, Jr., made application for the land formerly embraced in Mr. Curtis Brown's application. Mr. White's application was also rejected and he has joined with the remaining three original applicants in this appeal. Since Mr. Curtis Brown's heirs, by this action, have indicated that they do not wish to pursue his application further, Mr. Curtis Brown's case is considered closed.

filed before the filing of the withdrawal application by the Fish and Wildlife Service, and that their use of the land over a period of years has created a right to preferential treatment with respect to the land. 2/

An application for public lands creates no rights in the applicant other than the right to have his application duly considered, John R. Ross et al., A-27259 (March 12, 1956), and does not prevent the subsequent classification of the land for public recreation and wildlife management purposes. 43 CFR 295.10(a). However, the rejection of applications numbered Sacramento 043341 and 059787 was premature. These lands are included within the application for withdrawal and reservation of lands, Sacramento 051807, filed by the Fish and Wildlife Service and published in the Federal Register of May 2, 1957, pages 3129 and 3130. Where there is filed and recorded an application for withdrawal from a Federal Agency, the regulations provide:

> "* * * action on all prior applications the allowance of which is discretionary, and on all subsequent applications, respecting such lands will be suspended until final action on the application for withdrawal or reservation has been taken." 43 CFR 295.10(a).

Since final action has not been taken on the withdrawal application, the final determination of Sacramento 043341 and 059787 should have been, and is herewith suspended.

The lands embraced in small tract applications Sacramento 043340 and 043343 are not within the withdrawal application filed in 1957 by the Fish and Wildlife Service, and there is no evidence of record to indicate that there has been any further attempt by that agency to withdraw them since that time. The records, based on a field examination report dated approximately 9 years ago, do not provide a sufficient basis for an informed determination as to the proper classification of the land at this time.

Accordingly, the decisions of the Manager are reversed. Further action on applications numbered Sacramento 043341 and 059787 is suspended until final action on the Fish and Wildlife withdrawal application, Sacramento 051807, has been taken. Applications numbered Sacramento 043340 and 043343 are remanded to the Manager through the Bureau's State Supervisor at Sacramento for further consideration and appropriate action in the light of a new examination.

2/ The assertion of the appellants that it was error to withhold the reports of the field examination have been considered. However, there is nothing in the record which indicates that they have at any time requested to see them. These documents were available upon request. 43 CFR, 1958 Supp., 221.99(d); Roscoe T. Schafer, A-28131 (August 27, 1959).

Each appellant is allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. In taking an appeal there must be strict compliance with the regulations.

Edward Woozley
Director

Enclosure

DISTRIBUTION:

Hon. Clair Engle, United States Senate (5)
Hon. Harold T. Johnson, House of Representatives (5)
Gilmore and Gilmore, Attorneys for the appellants (Certified Mail)
Mr. William F. Gary (Regular Mail)
Mr. Homer C. Brown (Regular Mail)
Mr. Harold J. Brown (Regular Mail)
Mr. Joseph W. White, Jr. (Regular Mail)
Lands Staff Officer
Appeals List No. 1
LLM

DOCKET FILES

SMALL TRACTS * 3 Classification

CLASSIFICATION * 1 Generally

Small tract applications for lands highly valuable for public recreational purposes are properly rejected where the record indicates that the lands are needed to meet ever increasing demands for camp sites, picnic grounds, and other public recreational purposes.

Mae Jean Cripe et al., Sacramento 058206, etc. (December 17, 1959)
(Approved March 1, 1960, by the Assistant Secretary of the Interior
Roger Ernst)

RO

In reply refer to:

Sacramento 058206, etc. 1/
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 17, 1959

DECISION

Mae Jean Cripe et al., 1/ : Small Tract Applications

Decision Affirmed

Mrs. Mae Jean Cripe and the other small tract applicants listed in Appendix "A" attached have appealed from decisions of the Manager dated July 30, 1959, and subsequent dates which rejected their small tract applications filed pursuant to the Act of June 1, 1938 (43 U.S.C. 1952 ed., Supp V, sec. 682a et seq.), for lands in section 25, T. 26 S. R. 32 E., and secs 1, 23, and 26, T. 27 S., R. 32 E., M.D.M., Kern County, California for the stated reasons that certain of the lands are valuable for recreation and other public purposes and because the lands are too rough and mountainous in topography for cabin and homesite developments under the Small Tract Act.

The record reveals that the lands are located along the east flank and in the foothill breaks of Greenhorn Mountain in the vicinity of Lake Isabella Reservoir, Kern County, California. 2/ Field reports state that the lands are valuable for public recreation purposes which opinion is concurred in by the National Park Service. The reports state that Lake Isabella Reservoir is located about 50 miles from Bakersfield, California about 150 miles from Los Angeles, and that the Lake Isabella area constitutes a very important recreational outlet to a large segment of the population of Southern California. The reports reveal further that population demands for recreation facilities are continually on the increase.

1/ For the names of the applicants and the corresponding land office serial numbers see Appendix "A" attached.

2/ The record also indicates that the lands are embraced by a number of mining claims.

The record also indicates that parts of the lands are suitable for picnic grounds, camp sites, and other intensive type recreational uses. Though certain of the lands may be too rough in topography for such intensive uses they are valuable for hiking, bird hunting, wildlife conservation and watershed protection and serve as protective area or buffer zone to the more level lands located on or near the valley floor. In sum, the lands have a high public recreational potential to meet the expanding public demand therefor.

Kern County has an extensive recreation development program underway covering lands near Lake Isabella and near the lands here in issue. The Director, Kern County Park and Recreation Department has advised this Bureau that the County wants to develop more camp areas and other facilities to meet the expanding public demand for recreation and has expressed an interest in the lands involved for use in connection with the County's development program.

Real estate values in the vicinity of Lake Isabella are very high due to the influx of population into the area for recreational pursuits. It is therefore to the advantage of both public and private agencies concerned with recreation development to acquire vacant public lands for that use whenever public lands of appropriate character are available. It is our view that the allowance of the small tract applications to serve only the individual recreational needs of the small tract applicants here involved, would not be in the public interest, particularly when considered in relation to the demand for the lands for public recreational use. This view is consistent with the Bureau's decision in Madeline Annie Albert et al., Sacramento 050009 etc., (May 16, 1958)involving other similar type lands in the vicinity of Lake Isabellat and of the Department in Leroy E.Cassou et al., A-27600 etc. (August 26, 1958). It also conforms to the public recreation and land use policy statement of the Department of April 16, 1958.

In the circumstances, we believe that the lands are primarily valuable for development as a part of a public recreational program and that the small tract applications were properly rejected.

Therefore, the decisions of the Manager are affirmed.

Edward Woozley
Director

Approved: March 1, 1960

Assistant Secretary of the Interior

DISTRIBUTION:
Each Appellant listed in Appendix "A" (Regular Mail)
Lands Staff Officer
Appeals List No. 1
CFG

APPENDIX "A"

Name and Address	Serial Number
Mae Jean Cripe 2333 East Collins Orange, California	Sacremento 058206 ✓
Wesley E. Van Ordt 624 River Street Spring Lake, Michigan	058207 ✓
Jay H. Van Ordt 10871 South Grand Avenue Ontario, California	058208 ✓
Beatrice Bernice Kittle 1815 South Towner Santa Ana, California	058209 ✓
Lula Metsger Hendrix 2127 West Ash Ave. Fullerton, California	058210 ✓
Dorothy V. Van Ordt 10871 South Grand Avenue Ontario, California	059211 ✓
Carl Anton Sampel 2036 Beacon Ave. Anaheim, California	058212 ✓
Guy W. Terry 166 North Waverly Orange, California	058213 ✓
Joyce E. Terry 166 North Waverly Orange, California	058214 ✓
Florence M. Sampel 2036 Beacon Ave. Anaheim, California	058215 ✓
Mabel Decker Correll 10525 Newport Ave. Santa Ana, California	058216 ✓
Ronald Andrew Adam 1021 E. Rose Ave. Orange, California	058217 ✓

Mary Louisa Rhiel 1406 South Rita Way Santa Ana, California	058219 ✓
Marva Rosetta Larsen 2442 Valdina Anaheim, California	058221 ✓
Robert Francis Lavelle 1012 Lido Street Anaheim, California	058222 ✓
Martha Louise Carney 1624 South 8th Alhambra, California	058223 ✓
Walter Ray Myers 2121 Candis Santa Ana, California	058224 ✓
Rita Marie Eleuterius 2077 Locust Avenue Long Beach, California	058232 ✓
Geto Pallini 2077 Locust Avenue Long Beach, California	058233 ✓
Sherman Onellius Eleuterius 2077 Locust Avenue Long Beach, California	058234 ✓
Lee Howard Fulitz 2024 South 2nd Avenue Arcadia, California	058235 ✓
Abel Tollef Ruslie 435 Montana Street Monrovia, California	058236 ✓
Fred Albert Frangente 2285 Euclyptus Avenue Long Beach 6, California	058238 ✓
Frederick Angelo Frangente 2285 Euclyptus Avenue Long Beach 6, California	058239 ✓
Engarda Frangente 2285 Euclyptus Avenue Long Beach 6, California	058240 ✓
Suzanne Patricia Wright 1216 Richard Place Glendale 6, California	058269 ✓

Joseph Philip Tavolacci 1343 Rita Way Santa Ana, California	058270 ✓
Blanche Evelyn Tavolacci 1343 Rita Way Santa Ana, California	058271 ✓
Frank Joseph Doleshal 1644 Aliso Avenue Costa Messa, California	058272 ✓
Agnes Lenor Payne 1212 Castiac Avenue Oildale, California	058283 ✓
Bernard Earl Mallett 621 South Roanne Street Anaheim, California	058384 ✓
Lova Janette Mallett 621 South Roanne Street Anaheim, California	058385 ✓
Le Roy P. Reed 1024 Wanda Drive Anaheim, California	058386 ✓
Masel Brown Moody 1622 La Fayette Road Los Angeles, California	058430 ✓
Nadine Ann Adam 1021 East Rose Orange, California	058541 ✓
Ella Augusta Adam 1021 East Rose Orange, California	058542 ✓
Lois Virginia Foster 120 South Cherry St. Anaheim, California	058545 ✓
Ollie H. Harris, Jr. 1049 East Grand Ave. Pomona, California	058546 ✓
Pauline Doleshal 1644 Aliso Avenue Costa Mesa, California	058547 ✓

Verna Ruth Correll 058548 ✓
10525 Newport Avenue
Santa Ana, California

Clara M. Larson 058549 ✓
2442 Valdina
Anaheim, California

Thomas Francis Tonila 058550 ✓
18171 Lucero Way
Tustin, California

Spencer Schwass 058551 ✓
13009 Ramsey Drive
La Mirada, California

Jack C. Harrison 058676 ✓
1506 Lugo Avenue
San Bernardino, California

Howard M. Kirkley 058679 ✓
18091 Arrow Route
Fontana, California

Louie Avila Campa 058680 ✓
17999 Orange Way
Fontana, California

Arvis Francis Pierce 058716 ✓
12863 Brookhurst Street
Garden Grove, California

Charles E. Olson 058717 ✓
8937 Bentel St.
Rosemead, California

Lela J. Petersen 058718 ✓
1417 West St. Andrews Place
Santa Ana, California

Alice Smith Anderson 058719 ✓
4474 Paula Street
Lakewood, California

Charles A. McRae 058731 ✓
9304 East Ives Street
Bellflower, California

Franklin Delbert Ward 1431 South Sprague Street Santa Ana, California	058780 ✓
Robert W. Cocker 3522 South 54th Avenue Cicero 50, Illinois	058783 ✓
Mary E. Docker 3522 South 54th Avenue Cicero 50, Illinois	058784 ✓
John S. Rhiel 1406 South Rita Way Santa Ana, California	058897 ✓
Gerald D. Roarty 2333 East Collins Avenue Orange, California	058898 ✓
Lewis L. Cambre 622 Jacaranda Fullerton, California	058975 ✓
Norma P. Cambre 622 Jacaranda Fullerton, California	058976 ✓
Mae R. Stillman 2333 East Collins Avenue Orange, California	058977 ✓
William C. Stillman 2333 East Collins Avenue Orange, California	058978 ✓
Donald J. Couture 3134 West Polk Avenue Anaheim, California	059022 ✓
John Hungerford McKim 11708 South Horton Avenue Downey, California	059023 ✓

Bobby C. Bowers 11942 Shetland Road Garden Grove, California	059024 ✓
Adele Hansen 3181 West Lincoln Avenue Anaheim, California	059027 ✓
Jesse N. Fieldsend 3181 Lincoln Avenue Anaheim, California	059028 ✓
Bertrand Hansen 3181 Lincoln Avenue Anaheim, California	059029 ✓
Fred L. Venham 5324 Almira Road Southgate, California	059119 ✓
Wanda M. Venham 5324 Almira Road Southgate, California	059120 ✓
Roger Harold Kron 2310 South Lowell Street Santa Ana, California	059127 ✓
Olan Douglas McCurley 5910 Linden Avenue Long Beach, California	059128 ✓
Thomas A. Tyan 10724 San Jose Lynwood, California	059129 ✓
Naomi Somers Felton 20290 Crescent Drive Sunnyvale, California	059302 ✓
Charles Alexander Webb, Jr. 511 East Bishop Street Santa Ana, California	059337 ✓

Name	Serial No. (L. A.)
Dorothy Ellington Meyer 11502 Santiago Blvd. Orange, California	059405 ✓
William E. Meyer 11502 Santiago Blvd. Orange, California	059406 ✓
Harold W. Finney 425 S. First Street Santa Ana, California	059472 ✓
Harry C. Burns 4303 Sanborn Avenue Lynwood, California	059475 ✓
Peter Ellis Allen 13861 Gershon Pl. Santa Ana, California	059476 ✓
Donald M. Weaver* 15602 Chadron Avenue Gardena, California	057484 ✓
Kenneth C. McCoy* 7247 Via Rio Mida Downey, California	057485 ✓
Neil R. Lewis* 1151½ W. 88th Street Los Angeles 44, California	057486 ✓
Irvin C. Freivogel* 1204 W. 156th Place Gardena, California	057487 ✓

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* The appeals in these cases were summarily dismissed by Bureau decision dated December 1, 1959, for failure to submit a statement of reasons for the appeals. It was subsequently determined that a statement of reasons was submitted relating to the applications Sacramento 057484, 057485, 057486, 057487, as well as certain other small tract applications. Therefore, the Bureau's decision of December 1, 1959, is vacated.

appeal to Sec
Remanded A-28410 - 12-16-~~59~~ 60

SMALL TRACT * 3 Classification

A decision of the Chief, Lands Adjudication Unit which rejected small tract applications covering a part of a 40-acre subdivision because the entire 40 acres had been classified for disposal by public sale as a single tract will be affirmed where the record indicates that only about one half of the subdivision is suitable for disposal under the Small Tract Act and allowance of the Small Tract applications on the more select sites within the subdivision would leave the Bureau with the management of fragmentary, irregularly shaped tracts of land of relatively little value.

James Y. Hamai et al., Los Angeles 0134399 etc. December 31, 1959

In reply refer to:
Los Angeles 0134399 etc.
5.04g

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D. C.

December 31, 1959

Certified Mail
Return Receipt Requested

DECISION

James Yutaka Hamai et al. 1/ : Small Tracts

Decision of the Chief, Lands Adjudication Unit, Affirmed

James Yataka Hamai and the other applicants listed below have appealed from a decision of the Chief, Lands Adjudication Unit which rejected their Small Tract applications on the grounds that the entire 40-acre subdivision had been classified for public sale under section 2455, Revised Statutes, as amended (43 U.S.C., sec. 1171).

The record indicates that about one half of the 40-acre tract is taken up by a rough ridge in the northern part and a rough rocky wash which follows generally through the east half of the west half of the tract. Thus it appears that the land embraced by no more than four of the small tract applications covering one half of the 40-acre subdivision could be properly classified as suitable for disposal under the Small Tract Act. The remaining portions of the subdivision are rough and rocky and of very little value. Consequently, disposal of the more select sites under the provisions of the Small Tract Act would leave the Bureau with the management of rough, rocky, irregularly shaped parts of a subdivision that would have little-or-no-market value. In the circumstances disposal of the more select parts of the subdivision under the Small Tract Act would not be in the public interest. See James J. Kendrew, A-27145 (April 8, 1955).

1/ The name of each applicant and the corresponding land office serial number in each case is as follows:

Name	Serial Number
	Los Angeles
James Yutaka Hamai	0134399
Henry Saburo Sanematsu	0134400
Sidney James Thomson	0134401
Clara Tsuyuko Fukuda	0134404
Yoko Betty Fukuda	0134408
Fumiko May Fukuda	0134409

Therefore, the decision of the Chief, Lands Adjudication Unit, is affirmed.

James Yutaka Hamai and the others involved herein are allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken the amount of the filing fee will be computed on the basis of $5 for each application included in the appeal. If the appeal covers all applications adversely affected by this decision the total filing fee is $30.00. In taking an appeal there must be strict compliance with the regulations.

If an appeal is filed the adverse party to be served is Rudolph P. Gelaski, Post Office Box 826, Apple Valley, California.

Charles P. Mead
Acting Director

Enclosure

DISTRIBUTION:

Mr. James Y. Hamai (Certified Mail)
Mr. Henry S. Sanematsu (Certified Mail)
Mr. Sidney J. Thomson (Certified Mail)
Miss Clara T. Fukuda (Certified Mail)
Miss Yoko B. Fukuda (Certified Mail)
Mrs. Fumiko M. Fukuda (Certified Mail)
Mr. Rudolph P. Gelaski (Regular Mail)
Appeals List No. 1
Lands Staff Officer
CFG

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